

LEGAL BASIS OF EDUCATIONAL CONTROL

A Study of Centralization

by

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TO  
MY FATHER.

WHO IN HIS EIGHTY-THIRD YEAR  
STILL ENCOURAGES ME TO PURSUE KNOWLEDGE

oo

## PREFACE

This thesis is the result of a desire to know some of the relevant facts concerning centralization in education. It is presented with the hope that it will be of some value to persons interested in public affairs.

Acknowledgements are due John W. Twente, Professor of Education, whose constant faith in the writer, and whose helpful criticisms are sincerely appreciated; Frederic H. Guild, Professor of Political Science, whose legal suggestions were very helpful; and especially, Walter R. Smith, Professor of Education, to whom the writer is most grateful for his discriminating suggestions, enthusiastic attitude, and tireless guidance in the preparation of the manuscript.

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For all errors of fact and of judgment entire responsibility rests with the author.

-- R. H. S.

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# LEGAL BASIS FOR EDUCATIONAL CONTROL

## A Study of Centralization

### CHAPTER I

#### INTRODUCTION

American traditions of school management have given to the American people a system of public schools that is responsive<sup>1.</sup> to the democratic popular will, need, and aspirations. This system of schools is a creation of law.

"In all our educational development, from the earliest times in our national life to the present, the authority and power to develop public education have derived from the state."<sup>2.</sup>

In 1785, the Continental Congress passed an educational law which reserved lot No. 16 of every township for the maintenance<sup>3.</sup> of public schools. In 1787, the Continental Congress passed another ordinance in which it was declared that schools and the<sup>4.</sup> means of education shall forever be encouraged. The right to annul any act of a territorial government, and to approve its constitution as a state, always reserved by Congress, has provided a

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1. Federal Relations to Education. Report of the National Advisory Committee on Education. 1931. Part I. p. 29.
  2. Cubberley, E. P. Independence of School Government a Necessity. School and Society. (1933) Vol. 37. p. 265.
  3. Journal of Congress. Ordinance, May 20, 1785. Vol. X. p. 121.
  4. Journal of Congress. Ordinance, July 13, 1787. Vol. XIII. p. 61.

federal guarantee for educational welfare of the people of the  
5.  
territories and the new states.

The constitution of Massachusetts, adopted in 1780, seven years before the adoption of the Federal Constitution, contains the oldest constitutional basis for educational control. In it is found the primary authority for the control of education. It was worded  
6.  
by John Adams and he expressed the will of his state when he made it a duty of legislatures and magistrates to cherish, to encourage, and to countenance and inculcate principles of education.

"Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and Magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and sciences, and all seminaries of them; especially the University at Cambridge, public schools, and grammar schools in the towns, to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, generous sentiments among the people."7.

The educational powers here were vested in the legislatures and magistrates. Seventy-five years later, Massachusetts adopted Amendment Eighteen which provided funds for the support of the public

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5. Cubberley, E. P. State School Administration. p. 111.

6. Kettleborough, Charles. The State Constitutions. footnote, p. 264.

7. Massachusetts. Constitution. 1780 as amended to 1932. Ch. V. Sec. II.

schools under the order and superintendence of the authority of the town or city in which the funds were to be expended.<sup>8.</sup> Some constitutional provisions are now found in all of the forty-eight states and provide one field of data for this study.

The Federal Constitution of 1787, and eight of the thirteen original state constitutions, as well as several more of later date, failed to mention schools or education. Today, no American constitution is without provisions for education, permissive or mandatory. The total number of paragraphs concerning education, in the forty-eight documents now in force in the Commonwealths has reached 440. Change in economic and social conditions has brought new interpretations to certain clauses of the Federal Constitution. Federal interest in education has increased to the extent that a recent report of a special committee required a volume of 450 pages, much of it in tables and small print, to present the outlines of the present federal participation in educational activities.<sup>9.</sup>

All public education, whether federal, state, or local, has a legal background. The laws may be permissive or mandatory. They may be in statutes, constitutions, state court decisions, Congressional enactments, or Supreme Court Decisions.

Judicial interpretations, legal authority to make rules and regulations, and substantive law, all affect control in education. For this reason school administrators are demanding more legal research

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8. Massachusetts. Constitution. loc. cit. Eighteenth Article of Amendment.

9. Federal Relations to Education. Report of the National Advisory Committee on Education. 1931. Part II.

with respect to educational problems. This is needed in order to make readily available the legal principles of educational control. Educators are being sought more and more by legislators for advice and information when framing new educational laws. Educational officers are being given more judicial power in reviewing controversies and interpreting the laws and ordinances of both state and federal agencies. A study of the legal bases of educational control should reveal facts and conditions of administration in education which will throw some light upon the problems of government in education. Such a study is attempted in these pages.

It is the purpose of this investigation to follow the control factors in education through the legal bases for appointive powers, ordinance powers, and certain major legal mechanisms. Some problems involved in the study may be briefly set forth in the following questions.

1. To what extent are schools controlled by appointed officials? By ordinances? By legal mechanisms?
2. To what extent do federal and state authorities appoint educational officials?
3. What ordinance powers have federal and state authorities exercised?
4. To what extent has there been centralization of educational control as revealed by appointment, ordinances, and legal mechanisms?

Such a study may properly be said to revolve around the problem of discovering the trends of shifting control in education. Any information upon this shift is significant for educational planning.

In undertaking a comprehensive view as revealed by appointive powers, ordinance powers, and certain mechanistic controls, no claim is made even to approach an exhaustive treatment. Presenting administrative powers with no reference to school organization or school support, with which all administration is inextricably woven, is difficult. Yet in attempting this presentation, a feature of shifting control is exposed which is significant to education from two points of view; the relation of state and federal authorities to the ultimate product, the child, and the relation of the educator to the legislator of today and tomorrow.

The sources of data which serve as foundations of this study are:

- I. Constitutions, Federal and State.
- II. United States Statutes and Reports.
- III. Statutes or Laws of the States. 1873-1890 and 1913-1932.
- IV. Supreme Court Decisions which indicate new interpretations of fundamental law as related to education.
- V. Miscellaneous Ordinances, Reports, Studies, and Treatises concerning control in education.

The organization and presentation of the material is preceded by a discussion of the nature of educational control, administrative law, and a review of similar and related studies. Following this, data will be presented to show the legal features and sequences which indicate the shifting control in education.

#### The Nature of Educational Control.

The dualities of governmental control in America are not

duplicated in any other nation in the world. Although these dualities, state and federal, state and local, federal and local, exist, there is a constant shifting in the balance of powers of control. In generally accepted theory, the state is the unit of power in the government of our public-school system. Practically, many local units exercised almost complete authority in educational affairs during the days of difficult and laborious transportation and communication. This power to control educational affairs was a permissive power, legalized by a state constitution. It had been guaranteed by federal authority in those states entering the union under territorial acts. The eight original commonwealths which failed to write an educational clause into their first constitutions, amended them, or adopted new constitutions containing an article or section on education.

The demands of society which have brought into existence a Commissioner of Education with strong administrative power where no such executive existed in early days, have also brought a change in the local district. The school which was generally a three months school limited almost wholly to three subjects, has developed into a nine or ten months school with a wide scope of subjects, extra-curricular problems, parent-teacher associations, evening schools, and co-operative activities, social and industrial, juvenile and adult.

An illustration of how both centralization and decentralization have developed within the same system to a marked degree is found in New York. In regard to textbooks, there is a law which states:



"The textbooks used in the schools therein (common school districts) shall be designated at the annual meeting by a two-thirds vote of all the legal voters present and voting at the meeting."<sup>10</sup>.

In the same state the Commissioner of Education may order a school district to vote taxes for the transportation of pupils, after the district has voted against it in annual school meeting.<sup>11</sup> This power to compel districts to transport pupils was tested out thoroughly in the courts of New York and the state's highest court sanctioned the substitution of the Commissioner's judgment for that of the community.<sup>12</sup>

To present the growth of centralizing powers without showing at the same time the growth of decentralizing powers, gives an incomplete picture. However, it is not within the scope of this investigation to present a complete review. The number of factors and the variety among the many state systems preclude a study of such wide scope.

In no American public-school system may it be said that either federal, state, or local authorities have absolute control, although the powers vary with the different states and the different local units. There is a constant struggle between the two tendencies; one, to delegate more and more power to educational specialists in authoritative positions, the other to legislate so as to hold that power within limitations.<sup>13</sup> This is true of many governmental functions other than

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10. New York. Consolidated Laws, 1930. Ch. 15. Sec. 670-2.

11. Ibid., Laws, 1925. Ch. 674.

12. People ex rel. Board of Education v. Graves, 153 N.E. 49.

13. Comer, John Preston. Legislative Functions of National Administrative Authorities. 274 p.

education. The control involved in all of them has caused a field of law to come into existence, termed administrative law.

The administrative official is obviously in executive control. He is also sometimes given power to legislate,--make rules with the force of law. He exercises judicial power when directed to make decisions in controversies arising between local parties in his special field where technical training is necessary to understand the problem. <sup>14.</sup> Public health, banking, insurance, agriculture, interstate commerce, public utilities, and relations of employer and employee are some of the fields affected by administrative law, as well as education. Legislation goes forward very rapidly, and school codes are in a constant process of change, so that the school administrator today should be a student of school law. <sup>15.</sup> New situations demand a change in principles of law and their applications; unprecedented situations call for novel applications of old precedents or the formulation of new guides for the future.

There have been a number of studies carried on with reference to the legal basis for certain phases of educational work. They indicate the interest in the study of this question of the legal basis of educational control. Schuyler C. Wallace, in his treatise on state administrative supervision over cities, has one chapter on education in which he deals with the mechanisms of direct and indirect control used by educational authorities. This chapter points a way for the

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14. Brubacher, J. S. The Judicial Power of the New York State Commissioner of Education. 173 p.
15. Chambers, M. M. University Instruction in School Law. School and Society. (1932) Vol. 36. p. 476.

phase of this study dealing with the mechanisms of control in education. In checking the data which he used with that available for this study, it was found that the statutory law for ten states are identical while for thirty-eight states, the laws of this study range from eight to fifteen years later in date than those used by Wallace.<sup>16.</sup>

John Seiler Brubacher made a study of the judicial power of the New York State Commissioner,<sup>17.</sup> and Uhlman S. Alexander studied special legislation affecting public schools.<sup>18.</sup> They present findings from intensive data concerning a few states. Arthur W. Schmidt's report on a minimum educational program<sup>19.</sup> is built on the opinion of educators. What is actually being done is studied in the present investigation, through data from all the states and from federal sources.

J. N. Matzen has analysed the fundamental attitude of the American people toward education as revealed by state constitutional provisions.<sup>20.</sup> J. K. Flanders made a study based upon data available in 1923, dealing with mandatory law and its growth with regard to prescribed subjects for curriculum study.<sup>21.</sup> J. Frederick Weltzen made a legal study of tort liability of the public school corporation, of its officers and members of the instructional staff, limiting the study

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16. State Administrative Supervision Over Cities in the United States. 1927. 288 p.

17. Brubacher, J. S. loc. cit.

18. Special Legislation Affecting Schools. 1929. 141 p.

19. The Development of a State's Minimum Educational Program. 1932. 100 p.

20. State Constitutional Provisions for Education. 1931. 159 p.

21. Legislative Control of the Elementary Curriculum. 1925. 242 p.

to non-contractual liability. His data cover cases decided by the supreme courts of the states, his references include a great number of these cases, and his work is thoroughly indexed. His bibliography is informative concerning the studies in the field of school law which had been made at that date.<sup>22.</sup> One of the early reports of this control phase is that of T. H. MacDowell, who limits his treatise to finance.<sup>23.</sup> Other studies and texts dealing with specific phases of school law are included in the bibliography of this study.

Educational control may be that limited to a single school-master selecting his subjects for the school day according to his own wish, or that national situation where state legislation is subject to review by the United States Supreme Court.<sup>24.</sup>

Between these extremes and in a field where a mass of educational law has accumulated, the problem of this investigation lies. A careful selection and presentation of available data is attempted in the following chapters.

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22. The Legal Authority of the Public School. 1930. 239 p.  
23. State v. Local Control of the Elementary Education.  
United States Bureau of Education. Bulletin, No. 22. 1915.  
24. Nebraska Lutheran Synod et al v. McKelvie et al.  
262 U. S. 404.

## CHAPTER II

### APPOINTMENTS AND APPOINTIVE POWER

So long as the officers of education are chosen by the entire electorate, the offices will remain political and their holders for the most part will be politicians. For administrators to have any real control of the schools they must be specialists in their fields and be removed from politics. Appointed officers and appointive power will secure this result. The function of appointment is the building up of a superior personnel, the<sup>1.</sup> selection and retention of capable technical officials.

The power to remove an officer is closely related to the power of appointment. The authority to limit the list of possible appointees is an indirect appointive power. In this connection the certification of teachers, the separating of those licensed from those unlicensed, especially when the examination or the setting up of qualifications is left to the discretion of the officer, is very closely related to the power of appointment.

#### Federal Appointments and Appointive Power.

The Federal Constitution of the United States declares that the President shall nominate and by and with the consent of the Senate, shall appoint all other officers of the United States whose

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1. Wallace, Schuyler C. State Administrative Supervision Over Cities in the United States. 1928. p. 56.

appointments are not herein (the constitution) provided for, and which shall be established by law; but Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments. 2.

With this fundamental authority and that developed in the acts of Congress through the years, appointments and appointive power in Federal relations to education have extended into diverse and far reaching divisions of our government. Twenty-eight departments and special commissions have some direct or indirect control of educational affairs in seven distinct fields. These include the Commonwealths, Indians and Other Indigenous Peoples, Territories and Outlying Possessions, Training of Government Personnel, Research and Information Service, and International Intellectual Relations. 3.

For the purposes of this study, investigation of Federal Appointments deals with those special groups of federal educational officers who have direct or indirect control of some phase of educational work. The following groups have been selected and will be discussed in the order of their creation by federal law: Land-Grant Institutions, Office of Education, Co-operative Extension Work, Federal Vocational and Vocational Rehabilitation Work, Reserve Officer's Training Corps, and Federal Radio Commission.

#### Land-Grant Institutions.

The pre-legislative history of agricultural education in

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2. U. S. Constitution. Article II, Section 2;2.
  3. Willoughby, W. F. and Strayer, George D. Educational Activities of the Federal Government. Circular Number NA-64, National Advisory Committee on Education, Washington, D. C. 1929. 15 p.

America began with agricultural societies. In 1785, such a society was organized in Philadelphia. In 1794, the organization developed a plan to educate youth in the knowledge suitable for the agricultural citizens of the state. The first teaching of the science of agriculture had been introduced two years before this in Columbia University, New York. In 1796, George Washington recommended to Congress, a national university, one of its functions being the improvement of the country's basic industry, agriculture. In 1797, a Massachusetts agricultural society began to publish pamphlets dealing with this field of knowledge. In 1804, fairs began to be popular as a means of stimulating improvements in the science. By 1838, agitation for agricultural education caused a petition to be sent to the state legislature asking for state aid. The petition contained 6000 names.<sup>4.</sup> Schools of secondary grade were organized between 1823 and 1850 to develop agricultural education in New York, Connecticut, and Maine. Private colleges were attempted in Maryland, New York, Pennsylvania, and Michigan. The first state-supported agricultural college was opened in Michigan in 1857.<sup>5.</sup> It has continued to operate since that date. The private institutions failed, or were taken over by the states. These so-called "Farmer's High Schools" and "People's Colleges" led to requests for federal aid for the extending of such opportunities to every state and territory. The initial land-grant bill was introduced in 1857, passed the House in 1858 and the Senate in 1859, to be vetoed by President Buchanan. Congress again passed

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4. Wiest, Edward. Agricultural Organization in the United States. 1923. p. 189.

5. Ibid., p. 190.

the bill, known as the First Morrill Act, in 1862, and the signature of Abraham Lincoln made it the first law authorizing federal participation in education in the Commonwealths.

The legislative history of the Land-Grant Institutions began with this Morrill Act of 1862, which provided an endowment for a College of Agriculture and Mechanical Arts in every state and territory in the United States. The Act required that each Commonwealth must meet certain provisions. State acceptances of the provisions are listed in Table I.

TABLE I

STATE ACCEPTANCE OF THE MORRILL ACT OF 1862

Number of States	Date of Acceptance	Names of States
3	1862	Iowa, Vermont, Connecticut
14	1863	Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, West Virginia, Wisconsin.
3	1864	Arkansas, Maryland, Ohio
1	1865	Indiana
6	1865	California, Georgia, Mississippi, Nevada, North Carolina, Texas
4	1867	Alabama, Delaware, Illinois, Nebraska
3	1868	Tennessee, Pennsylvania, South Carolina
1	1869	Louisiana
1	1870	Florida

37 states from 1862-1870. Territories which became states accepted the provisions on entering the Union in 1879, 1888, 1889, 1890, 1898, and 1910. Oklahoma accepted by Special Act in 1890. There were 11 states accepted between 1879 and 1910.

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6. Source: Survey of Land-Grant Colleges and Universities. Office of Education. Bulletin 1930. No. 9.



The Federal Laws which have been enacted since 1862, affecting the Land-Grant Institutions and providing for the appointment of educational officials are listed in connection with the date of enactment by Congress in Table II.

Those which increased the federal service and created indirectly new bureaus in Washington, in charge of appointed officials, were the Hatch Act of 1887, the Smith-Lever Act of 1914, and the Smith Hughes Act of 1917. The other laws were largely variations and amendments, or interpretations of these initial laws which brought into existence the Experiment Stations, Co-operative Extension Work, and the Federal Board for Vocational Education.<sup>7</sup>

TABLE II  
CONGRESSIONAL LAWS CONCERNING LAND-GRANT INSTITUTIONS.

1862	First Morrill Act	12	Stat.	503
1864	Limiting Acceptance Date and extending benefits to West Virginia.	13	Stat.	47
1866	Extended benefits to Nevada and Diversion to School of Mines	14	Stat.	85
1867	Extended benefits to Nebraska	15	Stat.	13
1883	Investments at Discretion of State Legislature	22	Stat.	484
1887	Hatch Act	24	Stat.	440
1888	Amendment to Hatch Act	25	Stat.	176
1890	Second Morrill Act	26	Stat.	417
	Annual Appropriations			
1900	More Complete Endowment	31	Stat.	179
1906	Adams Act	34	Stat.	63
	Interpretation of Adams Act	34	Stat.	669-696
1907	Nelson Amendment	34	Stat.	1256-81
1910	Land Sales to Colorado	36	Stat.	847
1914	Smith-Lever Act	38	Stat.	372

7. Keesecker, Ward W. Digest of Legislation Providing Federal Subsidies for Education. Office of Education. Bulletin, 1930.  
No. 8.

8.  
TABLE II (continued)

1915	Alaska Agriculture School and School of Mines	38 Stat.	1214
1925	Purnell Act	43 Stat.	970
1926	Legislature Investments	44 Stat.	247
1927	Control to Board of Regents for New Mexico	44 Stat.	1296
1928	Extended benefits to Hawaii	45 Stat.	571
	Capper Ketcham Act	45 Stat.	711
1929	Extension of Benefits to Alaska	45 Stat.	1091,1256

The Federal Administration of the various divisions of education in the Land-Grant Institutions is through the Departments of Agriculture and Interior, and the separate establishments, including the Federal Board for Vocational Education, and the Federal Radio Commission.

The growth of the federal administration through departments and bureaus concerned with education, with the date of their creation, and the name of the administrators in charge, is set forth in Table III. The subordinates are Civil Service Personnel, not included in this table. Many co-operative services between the departments and bureaus, developed from 1920 to 1930, are not included in Table III.

TABLE III

OUTLINE OF FEDERAL DEPARTMENTS WITH ADMINISTRATORS AND OTHER PERSONNEL  
9.  
SERVICE FOR LAND-GRANT INSTITUTIONS.

Date	Department or Bureau	Administrator
1862	Department of Interior	Secretary of Interior
1867	Department of Education	Commissioner
1869	Office of Education (Bureau)	Commissioner
1887	Office of Experiment Stations	Secretary of Agriculture Director of Experiment Stations
1890	Office of Experiment Stations made Depository for all Reports from Land-Grant Institutions.	Assistants
1895	Office of Education	Chief of Land-Grant Colleges
1911	Office of Education	Title, Chief of Higher Education
1914	Department of Agriculture	Secretary of Agriculture (Extension)
1915	States Relations Service	Chief
1917	Federal Board for Vocational	Chairman
1921	Office of Extension Work	Director
	Division, Southern	Assistant in Charge
	Division, North Central	Principal in Charge
	Division, Western	Principal in Charge
	Division, Eastern	Principal in Charge
	Division, Subject Matter	Principal in Charge
	Division, Agriculture In- struction	Senior in Charge
	Division, Visual Instruction	Senior in Charge
	Division, Reports and Ef- ficiency Studies	Senior in Charge
1927	Federal Radio Commission	Chairman
1929	Office of Education	
	Special Survey Land-Grant Institutions	Chief of Higher Education

9. Selected Sources:

- (a) Wiest, Edward. Agricultural Organization in the United States. University of Kentucky. 1923.
- (b) Yearbooks of Agriculture. 1894-1924.
- (c) Monograph No. 14. Bureau of Education. 1923.
- (d) Official Register, U. S. 1929.
- (e) Survey of Land-Grant Colleges. op. cit.

The federal administration of land-grant institutions was initially placed with the Secretary of the Interior, who received the reports and made the recommendations to Congress. This procedure lasted from 1862 to 1868. Then the Office of Education was established. From 1868 to 1895, the Commissioner of Education received the reports of land-grant institutions, approved or disapproved the plans presented, and reported to the Secretary of Interior, who in turn reported to Congress. The new laws in 1895 included annual disbursement of funds and the duties of this service increased. Congress made an appropriation for a special clerk who became Chief of Land-Grant Colleges. His title was changed in 1911 to Chief of Higher Education and in 1932 he was still the federal officer in charge of Land-Grant Colleges. He reports to the Commissioner of Education.

In 1887, the federal administration of the Experiment Stations was placed with the Secretary of Agriculture. He chose a committee to assist with the duties for a short time, then organized the Office of Experiment Stations and Congress appropriated money for maintaining a Director. The Secretary of Agriculture was made the federal administrator of Cooperative Extension Work in 1914. The next year, in 1915, he organized the States Relations Service and placed a Chief in charge. In 1921 all extension work was brought together under an Office of Extension Work, and a Director was placed in charge. These officers report to the Secretary of Agriculture, and he reports to the President of the Senate and the Speaker of the House.

From 1862 to 1910, as each state accepted the land-grant

provisions, the legislatures and governors designated the agency of the commonwealth which should be responsible for the administration of the new field of education. Thirty-seven states accepted the provisions of the federal government and set up the administrative agency before 1870. The diversity of these first agencies is indicated in Table IV.

TABLE IV

TYPES OF AGENCIES ADMINISTRATING EARLY LAND-GRANT INSTITUTIONS.

10.

Number of States	Type of Agency or Board
16	State Officials
14	Land Commissioners
5	College Board of Trustees
2	University or College Fiscal Agent
1	Sinking Fund Commission
1	State Board of Education
4	Special Commission for University and School Lands
2	Special Commission of State Officials
1	State Surveyor General
2	Sale of Scrip through Fiscal Agency in New York

In 1930, the administration of the Land-Grant Institutions in the Commonwealths was delegated to a board in each case. The board selects a president or chancellor who is chief executive official of the institution. Certain divisions of the work in the institution have state agents, supervisors, and directors in a central office. These are later discussed under the titles Cooperative Extension Work, Federal Board for Vocational Education and State Administration.

The administrative boards in the commonwealths in charge of the Land-Grant Institutions in 1930 are appointed, or elected, as listed in Table V.

TABLE V

ADMINISTRATIVE BOARDS FOR LAND-GRANT INSTITUTIONS.

<u>Number of States</u>	<u>Authority which Appoints</u>
29	Governor of the State appoints entire board
7	Governor appoints part of the board
6	Alumni
2	Agricultural Organizations

The number of persons in each board varies greatly, from 3 to 50. The total in 1930 on 45 boards reached 644 members.<sup>11.</sup>

These boards have the appointment of the instructional staff in the Land-Grant Institutions. The growth in membership of this group, which was 4,666 in 1904,<sup>12.</sup> brought the figure to 26,509 in 1930 - 20,988 men and 5321 women.<sup>13.</sup>

Office of Education.

The pre-legislative history of the Office of Education includes thirty years of interest and planning on the part of educators. In 1840, a few educational items were placed in the census report. In 1854, a plan for a bureau of education was presented at

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11. Source: Survey of Land-Grant Colleges. op.cit.

12. Yearbook. Department of Agriculture. 1904.

13. Survey of Land-Grant Colleges. op.cit.

an annual meeting of the educational people. In 1866, a resolution was passed at a meeting of the National Association of School Superintendents, to present to Congress a plan for a Federal Bureau of Education.<sup>14.</sup>

The legislative history of the bureau and the appointments connected with it began with an act of Congress on March 2, 1867,<sup>15.</sup> creating a Department of Education. This act provided that there should be appointed by the President, by and with consent of the Senate, a Commissioner of Education. This Commissioner was to have authority to appoint one chief clerk and two other clerks.

The Department of Education created by the above act was changed in 1868 to a Bureau of Education and placed in the Department of the Interior. The Bureau was to be known as the Office of Education and the legislation concerning it went into effect in 1869.<sup>16.</sup>

As the office work demanded more personnel the new positions created were provided for by placing the salary for the new positions in the budget. When the appropriations were approved by Congress the positions were automatically open for appointment. As special divisions were created, they were named in the budget plans and were also the subjects of special legislation by Congress.

Until 1923, the personnel of the Office or Bureau of Education were listed separately. Then the Classification Act was passed<sup>17.</sup> and all Civil Service officers were grouped under another plan.

Those who served educational offices were no longer set apart. Only

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14. Service Monograph of the United States Government. Institute for Government Research. No. 14. 1923. p. 2-3.

15. 14 Stat. 434.

16. 15 Stat. 92, 106.

17. 42 Stat. 1488.

the chiefs and specialists who were not under the Civil Service plan, and who were listed in the Official Register of the Government may be tabulated with data now available.

From a group of five in 1869, the appointments grew in number to 38 in 1886, and to 83 in 1923. The growth in organization and in appropriations since then indicate the increased personnel for the past decade.

TABLE VI  
GROWTH OF THE PERSONNEL OF THE OFFICE OF EDUCATION AND LEGIS-  
18.  
LATION CONCERNING IT.

Date	Division or Specialist	U. S. Law
1867	Commissioner	14 Stat. 434
	Assistant Commissioner	15 Stat. 92, 106
	Chief Clerk	14 Stat. 434
	2 Assistants	Ibid.
	Editor	Ibid.
	Clerks	R.S. p. 27, Sec. 167, 168, 169
	Copyist	Ibid.
	Laborers	Ibid.
	Messenger	Ibid.
	Correspondence and Records	14 Stat. 434
1871	Library	16 Stat. 230, 242
	Statistics	Ibid.
	Translators	16 Stat. 475, 490
1873	Statistician	17 Stat. 61, 76
1875	Collector and Compiler of Statistics	22 Stat. 219, 249
	Alaska Division	
1884	Superintendent	
	Chief	
	Clerks	
	Agents (Office, Seattle)	23 Stat. 24, 27
1890	Foreign Education	26 Stat. 228, 260
1892	Reindeer Herders	27 Stat. 572, 590

18. Selected Sources: (a) Monograph. No. 14. op.cit;  
(b) United States Statutes at Large, (citations in Table VI);  
(c) Appropriations. Budget Estimates.



TABLE VI (continued)

Date	Division or Specialist	U. S. Law
1894	Specialist for Land-Grant Colleges	28 Stat. 764, 798
1900	Specialist in Educational Systems	31 Stat. 86, 124
1905	Alaska - Washington Personnel Editor	35 Stat. 317, 351
1906	Specialists	
	Higher Education	36 Stat. 1170, 1217
	Industrial Education	Ibid.
	Rural Education	36 Stat. 468, 515
	Physical Education	
	Home Education	
1910	Educational Legislation	
1914	Agriculture Division	38 Stat. 372 S 1
	Home Economics	Ibid.
1917	Commissioner, Member Federal Board for Vocational Education	39 Stat. 929, 932, 933
1918	School hygiene	39 Stat. 1070, 1106
1920	Kindergarten Education	40 Stat. 1213, 1249
	City School Systems	40 Stat. 757, 797
	Elementary Education	Ibid.
	Secondary Education	Ibid.
1923	Commissioner, Member Board Maternity and Infant Hygiene	42 Stat. 224
1925	Appropriations \$224,240	
1930	" " 399,960	
1931	" " 433,880	
1932	" " 510,000	
	Surveys, National	
	Secondary Education	
	Experts, Specialists appointed by Commissioner	
	Teacher Training	
	Experts, Specialists	
	School Revenue	19.
	Experts, Specialists	

19. Appropriations Budget Estimates. Senate Document, 334.  
71st Congress, 3rd Session. 1932.

TABLE VII

OUTLINES OF PERSONNEL OF OFFICE OF EDUCATION

1923 (including Civil Service)	20.	1931 (excluding Civil Service)	21.
Commissioner--Secretary		Commissioner	
Activities		Assistant Commissioner	
Chief Clerk, 3 Assistants		Chief Clerk	
Stenographic, 13 clerks		Research and Investigation	
Mails and Files, 3 clerks		Consultants	
Messenger Service, 3 messengers		2 specialists	
Editorial, 10 Assistants		Health Education	
Library, 10 Assistants		Industrial Education	
Statistics, 10 Assistants		Colleges and Professional	
Alaskan Division, 10 Assistants		Chief	
Field Service		2 Assistants	
Medical - 8 physicians		American School System	
Hospital - 14 nurses		Chief	
4 cooks and matrons		5 Assistants	
Education - 6 superintendents		Foreign School Systems	
143 teachers		Chief	
Research and Promotion		2 specialists	
Assistant Commissioner		Special Problems	
Higher Education, 3 specialists		Chief	
2 clerks		4 specialist assistants	
Rural Schools, 3 specialists		Statistical	
1 assistant		Chief	
1 statistician		1 assistant	
City Schools, 5 specialists		Editorial	
3 clerks		Chief	
Service		Assistant	
Office of chief		Library	
Industrial Education and		Chief	
Home Economics, 2 specialists		6 Assistants	
Commercial, 1 specialist		Service	
Foreign Education,		Chief	
1 specialist, 2 translators		6 Specialist Assistants	
Health Education		General Surveys	
1 specialist, 1 agent		Commissioner in charge	
3 clerks		4 chief directors	
Educational Legislation			
Secretary, 1 specialist			

20. Monograph No. 14. op.cit. p. 102.

21. School Life. 1931. Vol. 16. No. 9. p. 180.

Legislation providing for recent national surveys included authority for the appointment of specialists, experts, and assistants for each of the three special surveys which were inaugurated under the titles of Secondary Education, Teacher Training, and School Finance. This appointment power was included in the legislation of 1931.

#### Co-operative Extension Work.

The pre-legislative history of the development of the co-operative extension work started with the period of 1890 to 1906. From a rural social need, boys and girls were interested in production contests in Macoupin County, Illinois. The results were finally exhibited at the Louisiana Exposition. From there the idea spread to communities in Texas, Iowa, Ohio, and Minnesota. Encouraged by teachers, county superintendents, and social organizations, the work developed. The General Education Board was interested in 1906 and provided funds for use under the supervision of the Department of Agriculture. From 1906 to 1914 under a co-operative agreement signed by secretaries of the Education Board supplying the private funds, and the Department of Agriculture, the co-operative extension work became more firmly established.

On July 1st, 1914, the Smith-Lever Act went into effect. In it the government took over the support as well as the supervision of Extension work, and the relations with private philanthropy ceased. The work in 1914 required the appointment of a Director and the organization of a new bureau under the Department of Agriculture to be

known as the States Relations Service. A uniform extension system of education was then developed on the cooperation of the Federal and State governments, through which all extension work of both the Department of Agriculture and the State Agricultural Colleges was to be conducted.<sup>22.</sup>

The appointive positions inaugurated with this new federal law have increased for the 15 years for which figures are available as listed in Table VIII.

TABLE VIII

GROWTH IN PERSONNEL DUE TO LEGISLATION FOR CO-OPERATIVE  
EXTENSION WORK.<sup>23.</sup>

	1915	1920	1925	1930
Washington Staff	36	66	73	87
State Leaders and District Agents	128	284	362	487
County Agents (Men)	928	2033	2335	2509
County Agents (Women)	279	784	874	1185
Agents, 4-H Clubs	97	123	133	208
Specialists	---	802	930	1107
Negro Extension	74	225	277	300
Totals	1542	4337	5104	5883

Federal Board for Vocational Education.

In 1917, by authority of the Smith-Hughes Act, the President was required to appoint three members of the Federal Board for Vocational Education. Four ex-officio members named in the Act, are the

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22. Co-operative Extension Work with a 10 Year Review. Annual Report 10. 1926. 131 p.
23. Source: Annual Reports. Federal Board for Vocational Education. 1917-1932.

Secretaries of Labor, Commerce, and Agriculture, and the Commissioner of Education. The three appointees must be citizens of the United States and from certain fields of industry. One representative is from labor, one from manufacturing and commerce, and one from agriculture. The Federal Board for Vocational Education is empowered to employ such assistants as may be necessary to carry out the provisions of the act.<sup>24.</sup>

Later legislation increasing the powers and funds for this board includes the Civilian Vocational Rehabilitation Act of 1920, the George Reed Act of 1929, Amendments of 1930 to the Civilian Act, and of 1932 to the Smith Hughes Act.

The Federal Board for Vocational Education began service under the Department of the Interior but its activities and responsibilities for special funds have set its work apart as that of a special establishment.

The appointment power is shared with that of state boards created by state legislation to co-operate with the federal government in this field of education. Approval of the appointments made by state authorities is retained by the federal administrators. The increase of federally aided appointees in this field of education during the fourteen years of federal participation is shown in Table IX.

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24. 39 Stat. 929.

TABLE IX

GROWTH OF PERSONNEL DUE TO THE LEGISLATION FOR VOCATIONAL  
25.  
EDUCATION BY FEDERAL AND STATE GOVERNMENTS.

	1918	1926	1932
Federal Board for Vocational Education, Organization Staff, including Regional Agents and Specialists	27	33	48
State Directors	33	41	47
Supervisors	101	168	144
Instructors in federally aided schools for the train- ing of teachers	524	853	851
Federally aided teachers of vocational education	<u>5277</u>	<u>18717</u>	<u>28372</u>
Totals	5962	19812	32462

The government Register for 1930 lists the staff for  
federal administration of vocational education as including besides  
the Board, the following members:

- 1 Director
- 1 Chief of Agriculture Service
- 1 Chief of Trades and Industries Service
- 1 Chief of Home Economics Service
- 1 Chief of Commercial Education Service
- 1 Chief of Vocational Rehabilitation Service
- 1 Editor and Educational Consultant
- 1 Secretary and Chief Clerk

In addition there are 87 Civil Service Assistants who reside in the  
District of Columbia. The other members of the staff serve in

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25. Sources: (a) Annual Reports of Federal Board for Vocational  
Education. 1917-1932.  
(b) Miscellaneous Reports. Federal Board for Vocational  
Education. No. 383. Revised.

various regions of the United States and Territories.

#### Reserve Officers Training Corps.

The Defense Act of 1920 is the legal basis of extensive co-operation of federal authorities in military education as conducted in schools and colleges. Army officers and enlisted men detailed for this service were appointed for 226 educational institutions of college grade in 1930. During its first decade the appointees by the Secretary of War for this military education service reached 1717.

#### Federal Radio Commission.

The Radio Act of 1927 created a Federal Radio Commission to be appointed by the President. These officials have federal authority in educational broadcasting. The Register of Government Officials for 1930 lists the staff as follows:

5 Commissioners	1 Investigator
2 Secretaries	1 Press Chief
4 Legal Counselors	1 License Chief
2 Engineers	1 Files Chief
	1 Dispensing Clerk

### Summary.

The appointment power of the President of the United States has its legal basis in the Federal Constitution. From this authority and that delegated by Congress in Special Acts, come the educational appointments in connection with Land-Grant Institutions, Office of Education, Federal Board for Vocational Education, Cooperative Extension Service, Reserve Officer's Training Corps, and the Federal Radio Commission. The states accept provisions made by the appointees when they enact laws accepting Federal Aid. These provisions include approval of licenses of certain types of directors, supervisors, and teachers in the systems of education in the states.

The federal appointments included in the fields listed above were initiated in the years 1862, 1867, 1887, 1914, 1917, 1920, and 1927. Beginning with the Secretary of the Interior in 1862, the total personnel of federal appointees for Land-Grant Institutions, including the instructional staff in each college, was in 1930 approximately 30,000. From a Commissioner of Education and Clerks in 1867, the Office of Education had by 1930 developed a personnel of approximately 75 Chiefs and Experts, exclusive of Civil Service. From the Secretary of Agriculture in 1887, the Experiment Station Service had by 1930 developed a special office with a Director, Principals, Seniors, and Assistants in charge of nine divisions. The Cooperative Extension Work began with the federal Director in the Department of Agriculture in 1915 and included in 1930 a corps of appointees of 5883, exclusive of civil service assistants in Washington. The Federal Board for Vocational Education consisting of seven members in 1917 developed



during 13 years a corps of 32,462 federally aided employees, including the vocational teachers in secondary education. The Reserve Officers Training Corps initiated under the department of War in 1920, appointed 1717 instructors for this service in 1930. The Federal Radio Commission authorized in 1927, lists a personnel of 18 and a Civil Service in Washington of 97 for the year 1930.

Table X presents for 1930 numbers and approximate numbers of Federal employees in education in the selected fields. The numbers do not include the Civil Service employees which are listed in government reports under the provisions of the Classification Act. Since 1923 the Civil Service personnel are listed, not by function of service, but by department groups. The approximated numbers of the table are based upon the trends and specific cases found in the data.

TABLE X  
FEDERAL APPOINTEES IN EDUCATION, 1930

<hr/>			
Washington Staffs:	Land-Grant Colleges	50*	
	Office of Education	75*	
	Co-operative Extension	87	
	Federal Board for Vocational Education	48	
	Federal Radio Commission	18	278
State Boards, Directors, and Special Agents:	Land-Grant Board Members	644	
	College Presidents	50	
	Co-op. Ex. St. Agents	487	
	Voc. Ed. Directors and Supervisors	193	
	Voc. Ed. Boards	350*	1681
Instructional Staffs:	Land -Grant	26,509	
	Military Education	1,717	
	Voc. Teacher Training	851	29,077

TABLE X (continued)

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County Agents and Directors:		
Co-op Ex.	5,309	5,309
Instructional - Secondary Education		
Vocational	24,949	24,876

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Total		61,221
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\* Approximations.

### CHAPTER III

#### STATE CONSTITUTION AND LAWS PROVIDING FOR APPOINTMENTS

Each state has a separate and distinct school system and the authority to make its own laws. Each differs in some particular from every other state in the statutory law concerning appointive power. Again, in many important features similarities are found. Variations are found also in the state constitutions, some of which do not mention appointing power.

Arizona's Constitution directs the governor to appoint three members of the state board of education; one to be a city superintendent, one, a principal of a high school, and one, a county superintendent.<sup>1</sup> He appoints the regents of the university and the governing board of the other state educational institutions.<sup>2</sup>

California's Constitution states that the legislature shall provide for the appointment or election of the state board of education,<sup>3</sup> and that the university shall be kept free from political or sectarian influence in the appointment of its regents.<sup>4</sup>

Colorado's Constitution authorizes the governor, by and with the consent of the senate, to appoint three land commissioners to take charge of the lands set apart for educational purposes.<sup>5</sup>

Georgia's Constitution permitted the general assembly to substitute for the State School Commissioner such office or offices, as may be necessary to perfect the system of education.<sup>6</sup>

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1. Arizona. Constitution. (1912) Article XI. Sec. 3.

2. Ibid., Sec. 5.

3. California. Constitution. (1879) Article IX. Sec. 7.

4. Ibid. Sec. 9.

5. Colorado. Constitution. (1876) as amended to 1911 Art. IX. Sec.9.

6. Georgia. Constitution. (1877) as amended to 1896 Art. VIII. Sec. II, Par.1.

Idaho's Constitution provides for the membership of the state board of education to be prescribed by law.<sup>7</sup>

Iowa's Constitution permits the general assembly to abolish or reorganize the board of education.<sup>8</sup>

Louisiana's Constitution directs the governor to appoint six members of the state board of education.<sup>9</sup>

Michigan's Constitution directs the governor to fill vacancies on the board of regents by appointment.<sup>10</sup>

Mississippi's Constitution requires the board of education to appoint the county superintendent but gives the legislature power to make the office elective or to abolish it altogether.<sup>11</sup>

Montana's Constitution directs the governor to appoint eight members of the board of education's eleven members.<sup>12</sup>

New Jersey's Constitution provides that all officers whose appointments are not provided for, shall be nominated by the governor and appointed by him with the advice and consent of the senate.<sup>13</sup> This leaves the educational officers to be appointive.

New Mexico's Constitution provides for the governor to appoint, by and with the consent of the senate the board of education; one, to be head of a state school; one, a county superintendent, and one actually engaged in educational work.<sup>14</sup> The governor is directed to appoint the board of regents, not more than five members, not more than three from one political party.<sup>15</sup>

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7. Idaho. Constitution. 1890 as amended to 1912 Art. IX. Sec. 2.

8. Iowa. Constitution. 1857. Article IX. Sec. 15.

9. Louisiana. Constitution. 1921. Article XII. Sec. 7.

10. Michigan. Constitution. 1908. Article XI. Sec. 3.

11. Mississippi. Constitution. 1890. Article VIII. Sec. 204.

12. Montana. Constitution. 1899. Article XI. Sec. 11.

13. New Jersey. Constitution. 1844. Article VII. Sec. II.

14. New Mexico. Constitution. 1912. Article XII. Sec. 6.

15. Ibid., Sec. 13.

Ohio's Constitution as amended in 1912 gives the governor full power to appoint the superintendent of public instruction.<sup>16</sup>.

Oklahoma's Constitution provides for an ex-officio board of education until otherwise provided by law.<sup>17</sup>.

Oregon's Constitution provides for the governor to be the state superintendent for five years, after which the legislature was to provide for the election of that officer.<sup>18</sup>.

Pennsylvania's Constitution directs the governor by and with two-thirds of all the senate, to appoint the superintendent of public instruction.<sup>19</sup>. Women of twenty-one years of age and upwards are made eligible.<sup>20</sup>.

South Carolina's Constitution provides for the governor to appoint seven members of the board of education.<sup>21</sup>. The general assembly shall make provision for the election or appointment of other school officers.<sup>22</sup>.

Texas' Constitutional Amendment of 1928 provides for the legislature to make the officers of the board of education appointive or elective.<sup>23</sup>.

Virginia's Constitution provides for the board of visitors or trustees of the higher institutions of learning to nominate a list of persons from which the senate elects three to the board of education.<sup>24</sup>.

Wisconsin's Constitution states that the state superintendent shall be elected but that all other officers shall be elected or appointed as fixed by law.<sup>25</sup>.

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16. Ohio. Constitution. 1851 amended to 1912. Article VI. Sec. 4.

17. Oklahoma. Constitution. 1907. Article ~~XVI~~ Sec. 5.

18. Oregon. Constitution. 1857. Article VIII. Sec. 1.

19. Pennsylvania. Constitution. 1873 as amended to 1910. Article IV. Sec. 8.

20. Ibid. Art. X. Sec. 3.

21. South Carolina. Constitution. 1895. Article XI, Sec. 2.

22. Ibid., Sec. 3.

23. Texas. Constitution. 1876 as amended to 1929. Article VII. Sec. 8.

24. Virginia. Constitution. 1902. Article LX. Sec. 130.

25. Wisconsin. Constitution. 1848 as amended to 1903. Article X. Sec. 1.

The following data show appointive power, certification, and removal power as expressed in two periods for each state. Those of the recent period are stated first and since these laws are still in force, unless repealed since 1932, and since the language indicates whether the power is permissive or mandatory, the wording of the statute is used as far as practicable. For the statements of the earlier period, since a large number of them have been repealed, a more condensed form of expression is used. The plan of presentation in grouping the material around the state, and in alphabetical order, is to make the facts and comparisons in the individual systems available with a minimum amount of space.

#### ALABAMA (1927)

The governor shall appoint members of the state board of education, one from each congressional district. (The board has 2 ex-officio, and 10 appointed members).<sup>26</sup>

The state board of education, on approval of the state superintendent, shall appoint a course of study committee of not less than 7 nor more than 10 members. <sup>27</sup> The state board of education shall appoint a textbook commission of 7 members, and an advisory board of Negro education, of not more than 5 members.<sup>28</sup>

The state superintendent shall nominate to the board all the professional and clerical assistants of the department. The divisions of the department include business management, teacher training, statistics, rural schools, elementary schools, secondary education, vocational education, exceptional education, school and community organization, and such other divisions as the state board creates on re-

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26. Alabama. School Code of 1927. Art. IV. Sec. 26.

27. Ibid., Sec. 40.

28. Ibid., Sec. 30.

28.

commendation of the state superintendent.

The governor may remove members of the board of education for causes.<sup>29</sup> He may remove any person appointed under the provision of this code.<sup>30</sup>

#### ALABAMA (1886)

The state superintendent appointed a part time county superintendent.<sup>31</sup> He in turn appointed township superintendents.<sup>32</sup> The former received \$75 per annum, the latter was "relieved of road duty, jury duty, and poll tax".<sup>33</sup>

#### ARIZONA (1928)

The governor shall appoint three members of the state board of education. (Five members are ex-officio).<sup>34</sup>

The state board of education shall appoint, upon recommendation of the superintendent of public instruction, executive officers, deputies, clerks, and employees of the board. The state board shall supervise and control the certification of teachers and may revoke all certificates for cause.<sup>35</sup>

#### ARIZONA (1887)

The state superintendent of public instruction with two members appointed by him shall serve as a board of examiners.<sup>36</sup> The superintendent appointed county examiners.<sup>37</sup> The state superintendent was required to "be at some place where there is a post office."

#### ARKANSAS (1932)

The state board of education shall employ a Commissioner

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28. Alabama. Op. Cit. Art. V. Sec. 75.

29. Ibid., Art. IV. Sec. 30.

30. Ibid., Sec. 56.

31. Alabama. Code, 1886 Pt. I., Title II, Sec. 954.

32. Ibid., Sec. 966.

33. Ibid., Sec. 982.

34. Arizona. Revised Statutes, Sec. 944.

35. Ibid., Sec. 989, Sec. 1044.

36. Arizona. Revised Statutes, 1887. Sec. 1481.

37. Ibid., Sec. 1491.

38.

of Education, "not related within the fourth degree of consanguinity or affinity to any member" of the board. The board shall issue licenses to teachers. No teacher shall be employed unless licensed by the state board.<sup>39.</sup>

The Commissioner of Education by and with the advice and consent of the state board of education shall designate assistants as may be necessary, to carry out the provisions of vocational education.<sup>40.</sup>

#### ARKANSAS (1884)

The state superintendent had power to grant state certificates.<sup>41.</sup>

The county court appointed a county examiner.<sup>42.</sup>

#### CALIFORNIA (1929)

The governor shall appoint the board of education of 10 members.<sup>43.</sup>

The state board of education has power to appoint, on nomination of the superintendent of public instruction, the head of each division of the department of education.<sup>44.</sup> The board may appoint a secretary who shall act as executive officer of the board in absence of the state superintendent.<sup>45.</sup>

The state board of education may create subordinate positions in each division and select persons to fill such positions.<sup>46.</sup>

The superintendent of public instruction may appoint one deputy, one secretary, and one assistant superintendent in charge of research and statistics.<sup>47.</sup> The superintendent shall have power to employ assistant superintendents and other necessary clerical and expert assistants, in addition to the above.<sup>48.</sup>

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38. Arkansas. Laws of 1931. Act. 169, Sec. 22.

39. Ibid., Sec. 153.

40. Ibid., Sec. 188.

41. Arkansas. Statutes, 1884. Ch. 135, Sec. 6166.

42. Ibid., Sec. 6183.

43. California. Code and General Laws, 1929. Sec. 2. 1370.

44. Ibid., Sec. 2. 1392.

45. Ibid., Sec. 2. 1390.

46. Ibid., Sec. 2. 1443, Sec. 2. 1444.

47. Ibid., Sec. 2. 1411.

48. Ibid., Sec. 2. 1412.



### CALIFORNIA (1885)

No appointive power was recorded for state educational officials.<sup>49.</sup>

### COLORADO (1932)

The governor shall appoint 8 members of the state board of agriculture. (2 members as ex-officio).<sup>50.</sup> This board serves as the state board for vocational education, <sup>51.</sup> and is authorized to appoint the personnel necessary to meet the provisions for federal aid.<sup>52.</sup>

The state board of education shall appoint eight members of the state board of examiners. (The ninth member is ex-officio).<sup>53.</sup> The state board of education may revoke certificates.<sup>54.</sup>

The state superintendent of public instruction may issue state certificates, recommended by the state board of examiners. He has full power to recognize certificates from other states.<sup>55.</sup>

### COLORADO (1883)

The state board of education granted state diplomas.<sup>56.</sup>

### CONNECTICUT (1930)

The governor shall appoint 9 members of the board of education. (Two members are ex-officio).<sup>57.</sup>

The state board of education may appoint a secretary and an assistant secretary who are not members of the board, also such subordinates, agents, and employees as it finds necessary.<sup>58.</sup> The board may appoint an agent to secure the observance of laws relating to the instruction<sup>59.</sup> and prosecuting agents to enforce school laws.<sup>60.</sup> The board may appoint persons to administer federal aid,<sup>61.</sup> and grant state certificates to teach.<sup>62.</sup>

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49. California. Codes and Statutes, 1885.

50. Colorado. Compiled Laws, 1921, Sup. 1932. Sec. 3002.

51. Ibid., Sec. 8515.3.

52. Ibid.

53. Ibid., Sec. 8257.

54. Ibid., Sec. 8264.

55. Ibid., Sec. 8436.2.

56. Colorado. General Statutes, 1883.

57. Connecticut. General Statutes, 1930. Sec. 826.

58. Ibid., Sec. 827.

59. Ibid., Sec. 827.

60. Ibid., Sec. 828.

61. Ibid., Sec. 870.

62. Ibid., Sec. 884.

### CONNECTICUT (1887)

The general assembly appointed 4 members of the state board of education. (Two were ex-officio).<sup>63.</sup>

The state board of education was empowered to appoint an agent to secure due observance of the school laws.<sup>64.</sup> The board appointed a secretary whose duties were similar to those of a state superintendent.<sup>65.</sup>

### DELAWARE (1932)

The governor shall appoint the state board of education of six members.<sup>66.</sup> He shall appoint the commissioner of education,<sup>67.</sup> and the county school commissioner of each county.<sup>68.</sup>

### DELAWARE (1874)

The governor appointed the superintendent of free schools, who received no emolument, except "postage and traveling expenses".<sup>69.</sup>

### FLORIDA (1927)

The governor shall appoint the board of control. (Five members in charge of higher educational institutions.)<sup>70.</sup>

The state board of education shall employ a state superintendent of public instruction,<sup>71.</sup> a supervisor for elementary schools,<sup>72.</sup> and a supervisor of physical and health education.<sup>73.</sup> The board may remove subordinates from their offices in the department of education,<sup>74.</sup> and revoke certificates for cause.<sup>75.</sup>

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63. Connecticut. General Statutes, 1887, Sec. 2095.

64. Ibid., Sec. 2098.

65. Ibid., Sec. 2097.

66. Delaware. Laws of 1931. Ch. 193. Sec. 2.

67. Delaware. Statutes, 1915. Sec. 2274.

68. Ibid., Sec. 2276.

69. Delaware. Revised Code, 1874. Ch. 42, Sec. 23.

70. Florida. Compiled General Laws, 1927. Sec. 778.

71. Ibid., Sec. 623.

72. Ibid., Sec. 625.

73. Ibid., Sec. 628.

74. Ibid., Sec. 755.

75. Ibid., Sec. 648.

The state superintendent nominates for state board appointment two rural inspectors,<sup>76.</sup> and a grading committee.<sup>77.</sup>

#### FLORIDA (1881)

No appointive power was recorded for state educational officials.<sup>78.</sup>

#### GEORGIA (1928)

The governor shall appoint four members of the state board of education, three of whom shall be practical school men.<sup>79.</sup> (Two members of the board are ex-officio).

The state superintendent has power to appoint three state supervisors.<sup>80.</sup> He may nominate a high school supervisor for election by the state board.<sup>81.</sup> The state superintendent has authority to suspend a county superintendent but removal is for the decision of the state board of education.<sup>82.</sup> The state superintendent grades the papers for professional certificates or state licenses.<sup>83.</sup>

#### GEORGIA (1882)

The governor appointed the state school commissioner; appointment was to be confirmed by the senate.<sup>84.</sup> (This power was repealed in 1894).<sup>85.</sup>

#### IDAHO (1932)

The governor shall appoint five members of the state board of education. (One member is ex-officio.)<sup>86.</sup> He may remove a member for cause.<sup>87.</sup>

The state board of education shall appoint the commissioner of education, and upon his recommendation, may appoint such other specialists, assistant clerks, or other executive officers, as the work demands.<sup>88.</sup> The board may dismiss the com-

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76. Florida. Op. Cit. Sec. 682.

77. Ibid., Sec. 658.

78. Florida. Digest of Laws. 1881.

79. Georgia. Annotated Code, 1928. Sec. 1565a.

80. Ibid., Sec. 1565j.

81. Ibid., Sec. 1436K-L.

82. Ibid., Sec. 1565i.

83. Ibid., Sec. 1565p.

84. Georgia. Code, 1888. Constitution. Art. VIII. Sec. II.

85. Georgia. Laws of 1894, Act. No. 152. p. 34.

86. Idaho. Laws of 1923. p. 94.

87. Idaho. Compiled Statutes, 1919. Sec. 791.

88. Ibid., Sec. 797.

missioner for cause.<sup>89</sup> The board, through the executive, shall have entire control of the certification of teachers in accordance with law.<sup>90</sup>

#### IDAHO (1887)

The territorial governor appointed a territorial superintendent of public instruction.<sup>91</sup>

#### ILLINOIS (1929)

The governor, by and with consent of the senate, shall appoint nine officers of the normal school board. (Two members are ex-officio).<sup>92</sup>

The superintendent of public instruction shall grant certificates,<sup>93</sup> and to suspend operations of certificates for cause.<sup>94</sup>

#### ILLINOIS (1874)

No appointive power was recorded.<sup>95</sup>

#### INDIANA (1931)

The governor shall appoint six members of the state board of education, three actively engaged in education, three in sympathy with and engaged in vocational work. (Seven members of the board are ex-officio)<sup>96</sup>. The state board is designated to appoint such assistants as may be necessary under the provisions of federal aid.<sup>97</sup> The state board may grant state life certificates.<sup>98</sup>

The state superintendent is authorized to employ two clerks for his office.<sup>99</sup> With the approval of the state

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89. Idaho. Op Cit. Sec. 797.

90. Ibid., Sec. 803.

91. Idaho. Revised Statutes, 1887. Ch. II. Title III.

92. Illinois. Revised Statutes, 1929. Civil Administ. Code. Sec. 12.

93. Ibid., Ch. 122. Sec. 3. Tenth.

94. Ibid.

95. Illinois. Revised Statutes, 1874. Ch. 122.

96. Indiana. Statutes, 1926. Sec. 6444.

97. Ibid., Sec. 7056.

98. Ibid., Sec. 6447.

99. Ibid., Sec. 6429.

board of education, the state superintendent shall appoint a suitable person to inspect the elementary and high schools.<sup>100.</sup>

#### INDIANA (1881)

The state board of education granted state certificates.<sup>101.</sup>

#### IOWA (1931)

The governor shall appoint nine members for a state board of education. Not more than five may be of one party, and not more than one alumnus from each state institution shall be members at one time.<sup>102.</sup> The governor shall appoint three of the seven educational examiners,<sup>103.</sup> with the approval of a majority of the senate, the governor may remove any member of the state board of education.<sup>104.</sup>

The board of examiners shall employ a secretary and such persons as are necessary to assist in examination and reading of answer papers.<sup>105.</sup>

The state superintendent may appoint a deputy, whose appointment must be approved by the governor. He shall appoint a chief clerk and three school inspectors.<sup>106.</sup>

#### IOWA (1880)

The executive council appointed two members of state board of examiners.<sup>107.</sup> The board issued certificates.<sup>108.</sup>

#### KANSAS (1933)

The governor shall appoint eight members of the state board of education, one, a member of the faculty of the state university or the state agricultural college; one, a member of the faculty of one of the state teachers colleges; one, from the faculty of a denominational college, one county superintendent, one city superintendent, one high school principal, two members not in school work. (One member is ex-

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100. Indiana. Op Cit. Sec. 6430.

101. Indiana. Revised Statutes, 1881. Sec. 4422.

102. Iowa. Code, 1931. Sec. 3912.

103. Ibid., Sec. 3858.

104. Ibid., Sec. 3892.

105. Ibid., Sec. 3858.

106. Ibid., Sec. 3835.

107. Iowa. Annotated Statutes, 1880. Sec. 1583 Par. I.

108. Ibid., Sec. 1583. Par. 3.

officio).<sup>109</sup>. The governor shall appoint a board of regents of nine members to have charge of the state schools of higher education.<sup>110</sup>.

The state board of education shall issue certificates to teach,<sup>111</sup> and is empowered to cancel certificates.<sup>112</sup>.

The state superintendent of public instruction may appoint assistants not exceeding four in number, who shall serve as supervisors of the public schools including rural, graded, and high schools.<sup>113</sup>.

#### KANSAS (1885)

The state superintendent appointed one assistant and one clerk.<sup>114</sup>. He appointed annually, three persons to visit the normal schools and report.<sup>115</sup>.

#### KENTUCKY (1930)

The governor shall appoint three of the eleven members of the educational commission.<sup>116</sup>. He shall appoint ten members of the textbook commission. (one member is ex-officio).<sup>117</sup>.

The superintendent of public instruction may appoint an assistant superintendent, chief clerk, all other clerks, stenographers, and employees, the work demands.<sup>118</sup>. These shall include besides those mentioned directors of statistics, inspection and accountants, certification, and examination, rural supervision negro education, high school supervision, vocational education; office personnel for each, and additional departments within the funds.<sup>119</sup>.

The director of certification shall issue certificates.<sup>120</sup>.

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109. Kansas. Laws of 1933. Note: act not yet published.  
110. Kansas. Revised Statutes Supplement, 1931. Sec. 74-3201.  
111. Kansas. Revised Statutes, 1923. Sec. 72-1301.  
112. Ibid., Sec. 72-1435.  
113. Ibid., Sec. 72-105.  
114. Kansas. Compiled Laws, 1885. Sec. 5985.  
115. Ibid., Sec. 3531.  
116. Kentucky. Statutes, 1930. Sec. 4383a-2.  
117. Ibid., Sec. 4421a-1.  
118. Ibid., Sec. 4396-5.  
119. Ibid., Sec. 4396-6.  
120. Ibid., Sec. 4501-10.

### KENTUCKY (1887)

The superintendent of public instruction, Secretary of State, and Attorney General, elected two professional teachers to serve on the state board with them.<sup>121</sup> The superintendent was empowered to appoint two clerks.<sup>122</sup>

### LOUISIANA (1932)

The governor shall appoint three members of the state board of education. (Eight members are elected.)<sup>123</sup>. By and with consent of the senate, the governor shall appoint governing boards for Louisiana State University and Agricultural and Mechanical College.<sup>124</sup>

The state board of education shall appoint the governing boards over all other higher educational institutions.<sup>125</sup>. The board shall appoint an examining commission of as many members as may be required.<sup>126</sup>

### LOUISIANA (1888)

The governor appointed six members of the state board of education. (Two members were ex-officio.)<sup>127</sup>.

The state board appointed parish superintendents, one for each parish, except Orleans.<sup>128</sup>

### MAINE (1930)

The governor by and with consent of senate shall appoint the commissioner of education.<sup>129</sup>

### MAINE (1884)

The governor, by and with consent of the senate, appointed the state superintendent of instruction.<sup>130</sup>

### MARYLAND (1924)

The governor shall appoint the state board of education

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121. Kentucky. General Statutes, 1887. Ch. 96. Art. IV. Par.1.

122. Ibid., Art. V., Par. 2.

123. Louisiana. Constitution, 1921. Art. XIII., Sec. 4.

124. Ibid., Sec. 7.

125. Louisiana. Constitution, 1921. Art. XII. Sec. 7.

126. Louisiana. Laws of 1916 Act. 120. Sec. 37.

127. Louisiana. Laws of 1888. Act. 81, p. 310. Sec. 1.

128. Ibid., p. 310, Sec. 3.

129. Maine. Revised Statutes, 1930. Sec. 147.

130. Maine, Revised Statutes, 1884. Ch. 11. Sec. 102.

of seven members.<sup>131</sup> He shall appoint county boards of education,<sup>132</sup> and they in turn shall appoint district boards of school trustees.<sup>133</sup> The governor may remove members of the state board, for cause.<sup>134</sup>

The state board of education shall appoint the state superintendent of schools.<sup>135</sup> The board may remove the state superintendent for cause.<sup>136</sup>

The state superintendent shall issue certificates to teachers.<sup>137</sup> He may remove members of county boards, for cause.<sup>138</sup>

#### MARYLAND (1878)

The governor appointed from among the country boards, four members who with himself and the principal of the normal school served as the state board.<sup>139</sup>

#### MASSACHUSETTS (1927)

The governor, with advice and consent of the council, shall appoint the commissioner of education.<sup>140</sup> The governor shall appoint six members of Board of Education. (One is ex-officio).<sup>141</sup> He shall appoint the directors for the divisions of public libraries, immigration, and the blind. These directors may appoint their subordinate officers.<sup>142</sup>

The commissioner of education shall appoint directors of divisions other than those appointed by the governor, and other assistants as the work of the departments require.<sup>143</sup> The commissioner may establish a division consisting of a director and a nine-member advisory board appointed by the governor, to train and instruct soldiers and sailors.<sup>144</sup> With ap-

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131. Maryland. Annotated Code, 1924. Art. 77, Sec. 5.

132. Ibid., Sec. 6.

133. Ibid., Sec. 8.

134. Ibid., Sec. 5.

135. Ibid., Sec. 27.

136. Ibid., Sec. 27.

137. Ibid., Sec. 31.

138. Ibid., Sec. 6.

139. Maryland. Revised Code, 1878. Art. 27, Sec. 5.

140. Massachusetts. General Laws, 1927. Ch. 15. Sec. 2.

141. Ibid., Sec. 3.

142. Ibid., Sec. 9, Sec. 12, Sec. 15.

143. Ibid., Sec. 5.

144. Ibid., Sec. 7.



proval of the state board of education, the commissioner may appoint a state advisory council, and local advisory councils in connection with the university extension and correspondence course.<sup>145.</sup>

#### MASSACHUSETTS (1882)

The governor, by and with advice of the council, appointed eight members of the state board of education. (Four members were ex-officio.)<sup>146.</sup>

The state board of education appointed a secretary.<sup>147.</sup> The board was empowered to appoint agents to make inquiries concerning the schools.<sup>148.</sup>

#### MICHIGAN (1929)

The state board of education is empowered to grant certificates and revoke the same for cause.<sup>149.</sup>

The state superintendent of public instruction may appoint a deputy and may revoke such appointment.<sup>150.</sup> He may appoint such other assistants as he may deem necessary.<sup>151</sup> He may request the governor to remove an incompetent county commissioner, or member of the board of examiners.<sup>152.</sup>

#### MICHIGAN (1890)

The state board of education grants state certificates.<sup>153.</sup>

The state superintendent appointed a deputy to execute the duties of his office in case of a vacancy or absence of the superintendent.<sup>154.</sup>

#### MINNESOTA (1927)

The governor, by and with the approval of the senate, shall appoint five members for a board of education.<sup>155.</sup>

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145. Massachusetts. Op. Cit. Sec. 6.

146. Massachusetts. Public Statutes, 1882. Ch. 41. Title X Sec.1

147. Ibid., Sec. 4.

148. Ibid., Sec. 9.

149. Michigan. Compiled Laws, 1929. Sec. 7608.

150. Ibid., Sec. 7336.

151. Ibid., Sec. 1337.

152. Ibid., Sec. 7332.

153. Michigan. Howell's Annotated Statutes, 1890. Sec. 4970.

154. Ibid., Sec. 5027.

155. Minnesota. Statutes, 1927. Sec. 2958.

The state board of education shall have power to appoint the following educational officers; commissioner of education, deputy commissioner, one head of department at \$4000, four heads at \$3500, five assistants at \$3000, four assistants at \$2500, two assistants at \$1500, and clerks and stenographers with salaries not exceeding the amount appropriated.<sup>156</sup>.

The commissioner of education may nominate the subordinate officers,<sup>157</sup>. issue certificates,<sup>158</sup>. and may annul certificates.<sup>159</sup>. Any official of the department of education may be removed by the authority which appointed him.<sup>160</sup>.

#### MINNESOTA (1878)

The governor, by and with advice of the senate, appointed the state superintendent,<sup>161</sup>.

#### MISSISSIPPI (1930)

The state board of education may remove a county superintendent.<sup>162</sup>.

The state superintendent shall appoint three members as a state board of examiners.<sup>163</sup>. He may employ an assistant, a chief clerk, supervisors of high schools, four stenographers, and such other help as may be authorized.<sup>164</sup>.

#### MISSISSIPPI (1880)

The state board of education, with advice and consent of the senate, appointed county superintendents.<sup>165</sup>.

#### MISSOURI (1930)

The governor, by and with advice and consent of the senate, shall appoint the regents of teachers colleges, seven for each college.<sup>166</sup>.

The president of the state board of education shall appoint five members to be known as the state advisory

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156. Minnesota. Op. cit. Sec. 2961.

157. Ibid., Sec. 2962.

158. Ibid., Sec. 2916.

159. Ibid., Sec. 2926.

160. Ibid., Sec. 2969.

161. Minnesota. General Statutes, 1878. Ch. 36. Sec. 49.

162. Mississippi. Code, 1930. Sec. 6549.

163. Ibid., Sec. 6549.

164. Ibid., Sec. 6559.

165. Mississippi. Revised Code, 1880. Sec. 690.

166. Missouri. Statutes, 1930. Sec. 9597.

committee on vocational education.<sup>167.</sup>

The state superintendent may employ a chief clerk.<sup>168.</sup>  
He may issue certificates and revoke the same for cause.<sup>169.</sup>

MISSOURI (1889)

The state superintendent employed a chief clerk.<sup>170.</sup>

MONTANA (1921)

The governor by and with consent of the senate shall appoint eight members of the board of education. (Three members are ex-officio).<sup>171.</sup>

The state board of education shall issue certificates.<sup>172.</sup>

The state superintendent may nominate a board of examiners for election by the state board of education.<sup>173.</sup>

MONTANA (1888)

The governor, by and with consent of the legislative council appointed the state superintendent of instruction.<sup>174.</sup>

NEBRASKA (1929)

The governor shall appoint one woman to serve on the state board for vocational education.<sup>175.</sup>

The state board for vocational education shall appoint any assistants necessary to carry out the provisions of vocational education.<sup>176.</sup>

The state superintendent shall appoint a deputy<sup>177.</sup>, issue certificates<sup>178.</sup>, and may revoke the same for cause.<sup>179.</sup>

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167. Missouri. Statutes, 1930. Sec. 9880.

168. Ibid., Sec. 9445.

169. Ibid., Sec. 9444.

170. Missouri. Revised Statutes, 1889. Sec. 8080.

171. Montana. Revised. Codes, 1921. Sec. 831.

172. Ibid., Sec. 837, Sec. 838.

173. Ibid., Sec. 1089.

174. Montana. Compiled Laws, 1888, Sec. 1861.

175. Nebraska. Compiled Statutes, 1929. Sec. 79-2203.

176. Ibid., Sec. 79-2207.

177. Ibid., Sec. 79-1610

178. Ibid., Sec. 79-1301.

179. Ibid., Sec. 79-1308.

NEBRASKA (1881)

The governor appointed five members of the board of control for the state normal school. (Two members were ex-officio).<sup>180.</sup>

NEVADA (1929)

The state board of education shall appoint one deputy for each of the five subdivisions of the state.<sup>181.</sup> They may remove deputies upon recommendation of the state superintendent.<sup>182.</sup> The board shall grant certificates<sup>183.</sup> and may suspend or revoke them.<sup>184.</sup>

The state superintendent has power to appoint a deputy for his own office to do such work as the state board or the state superintendent may direct.<sup>185.</sup>

NEVADA (1885)

No appointment power was recorded.<sup>186.</sup>

NEW HAMPSHIRE (1926)

The governor shall appoint five members of the state board of education. (Three members are ex-officio)<sup>187.</sup> He, with the council, may remove members of the state board for cause.<sup>188.</sup>

The state board shall employ a skilled executive officer to be called the "commissioner of education". He shall be appointed for an indefinite term and shall be subject to removal upon majority vote of the board.<sup>189.</sup> The state board, through the commissioner shall issue certificates to those who pass required examinations.<sup>190.</sup> The state board, through the commissioner, and upon consultation of the local boards in each

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180. Nebraska, Compiled Statutes, 1881. Ch. 79. Sub. XIII.

181. Nevada, Compiled Laws, 1929. Sec. 5658.

182. Ibid., Sec. 5665.

183. Ibid., Sec. 5655.

184. Ibid., Sec. 5868.

185. Ibid., Sec. 5868.

186. Nevada, General Statutes, 1885.

187. New Hampshire, Public Laws, 1926. Ch. 116. Sec. 2.

188. Ibid., Sec. 3.

189. Ibid., Sec. 9.

190. Ibid., Sec. 11.

supervisory union, may employ a superintendent, supervisors, inspectors, stenographers, accountants, clerks, and agents, as may be necessary to enable it to perform the duties imposed on it by law.<sup>191.</sup>

#### NEW HAMPSHIRE (1878)

The governor and council appointed the superintendent of public instruction.<sup>192.</sup>

#### NEW JERSEY (1930)

The governor, by and with advice and consent of the senate shall appoint a commissioner of education. The governor, by and with the consent of the senate shall appoint the state board of education of ten members.<sup>193.</sup>

The commissioner of education, by and with advice and consent of the board of education, may appoint five assistant commissioners, described below; one, to act in place of the commissioner during absence; one as supervisor of elementary education; one as supervisor of industrial education; one to supervise and direct business matters; and one, to hear controversies and disputes which arise under school laws or rules and regulations.<sup>194.</sup> The commissioner may appoint an inspector of buildings, and an inspector of accounts.<sup>195.</sup> By and with the consent of the state board, the commissioner may appoint county superintendents and for cause remove them.<sup>196.</sup>

The state board of examiners shall grant certificates<sup>197.</sup> and may revoke them under rules and regulations by the state board.<sup>198.</sup>

#### NEW JERSEY (1878)

The state board appointed county superintendents.<sup>199.</sup>

The state superintendent appointed an assistant.<sup>200.</sup>

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191. New Hampshire. Op. cit.

192. New Hampshire. General Laws, 1878, Ch. 92., Sec. 1.

193. New Jersey. Statutes, Supplement, 1925-30. Sec. 185-1b.

194. Ibid., Sec. 185-21c.

195. Ibid., Subsection 6.

196. Ibid., Sec. 185-22.

197. New Jersey, Compiled Statutes, 1915. Sec. 4732.

198. Ibid.

199. New Jersey. Revision of Laws Supplement, 1878. Sec. 2.

200. Ibid., Sec. 1.

NEW MEXICO (1929)

The governor shall appoint five members of the state board of education. (Two members are ex-officio).<sup>201.</sup> The governor shall appoint an educational budget auditor.<sup>202.</sup>

The state board of education may issue certificates,<sup>203.</sup> and revoke them for cause.<sup>204.</sup> They may remove a county superintendent for cause, after which he may never be employed in any county in the state.<sup>205.</sup>

The state superintendent may employ an assistant superintendent conversant with the Spanish and English languages.<sup>206.</sup>

NEW MEXICO (1880)

The territorial governor appointed a territorial superintendent of schools.<sup>207.</sup>

NEW YORK (1930)

The regents of the university shall appoint the commissioner of education and a deputy commissioner of education.<sup>208.</sup>

The commissioner shall appoint, subject to the approval of the regents, such assistant commissioners, as he shall deem necessary,<sup>209.</sup> and all other needed employees and officers,<sup>210.</sup> The commissioner may appoint the state medical inspector.<sup>211.</sup> He, with the approval of the regents, may at his pleasure remove from office any assistant commissioner, or other appointee, or employee.<sup>212.</sup> He may remove a school officer, trustee, member of board of education, clerk, collector, for violating decisions, rules or regulations, of the regents or of the commissioner of education.<sup>213.</sup> He may remove any district superintendent for cause.<sup>214.</sup> He shall issue certificates,<sup>215.</sup> and may annul them for cause.<sup>216.</sup>

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201. New Mexico. Statutes, 1929. Sec. 120-102.

202. Ibid., 120-301.

203. Ibid., 120-105f.

204. Ibid., 120-105g.

205. Ibid., 120-406.

206. Ibid., 120-201K.

207. New Mexico. General Laws, 1880. Art. XXIV, Sec. 7.

208. New York. Consolidated Laws, 1930. Ch. 15, Sec. 20.

209. Ibid., Sec. 22.

210. Ibid., Sec. 23.

211. Ibid., Sec. 577.

212. Ibid., Sec. 24.

213. Ibid., Sec. 95.

214. Ibid.,

215. Ibid., Sec. 553.

216. Ibid., Sec. 556.

NEW YORK (1881)

The senate and assembly elected the state superintendent by joint ballot.<sup>217</sup> They chose nineteen members of the regents. (Two were ex-officio).<sup>218</sup>

The state superintendent appointed a deputy and clerks.<sup>219</sup>

NORTH CAROLINA (1924)

The state board of education shall appoint such supervisors and assistants, both clerical and professional as may be necessary.<sup>220</sup> The board may employ a director of negro education.<sup>221</sup> The state board is constituted the legal board for certifying all teachers.<sup>222</sup>

The state superintendent may remove any member of the county board of education for cause.<sup>223</sup>

NORTH CAROLINA (1883)

The state board of education appointed an engineer and a surveyor to direct the drainage of swamp lands.<sup>224</sup> The board appointed an agent of swamp lands.<sup>225</sup>

NORTH DAKOTA (1925)

The governor, by and with consent of the senate, shall appoint three members of the state board of education. (Two members are ex-officio).<sup>226</sup>

The state board of education is the board for vocational education and has full authority to provide for certification for directors, supervisors, and teachers of vocational education.<sup>227</sup>

The state superintendent may nominate a high school inspector for election by the state board.<sup>228</sup> The state super-

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217. New York. Revised Statutes, 1881. Ch. XV. Title 2. Sec. 1.

218. Ibid., Title I., Sec. 4.

219. Ibid., Title 2., Sec. 2, Sec. 5.

220. North Carolina. Consolidated Statutes, 1924., Sec. 5405

221. Ibid.

222. Ibid., Sec. 5404.

223. Ibid., Sec. 5421.

224. North Carolina. Code, 1883. Sec. 2512.

225. Ibid., Sec. 2523.

226. North Dakota. Compiled Laws Supplement 1925. Sec. 1423.

227. Ibid., Sec. 1471.

228. Ibid., Sec. 1433.

intendent may appoint a deputy, inspector, and clerks provided by law.<sup>229.</sup>

#### NORTH DAKOTA (1895)

The state board of university and school lands appointed an agent of school lands.<sup>230.</sup>

#### OHIO (1930)

The governor shall appoint the superintendent of public instruction.<sup>231.</sup> The directors of education, agriculture, commerce, and industrial relations, appointed by the governor shall constitute the state board for vocational education.<sup>232.</sup>

The state board for vocational education may employ such technical assistants as may be necessary.<sup>233.</sup> The board may appoint directors, supervisors, and other assistants as may be necessary to carry out the provisions of the vocational act.<sup>234.</sup>

The state superintendent shall appoint five competent persons as a state examining board,<sup>235.</sup> who may issue certificates countersigned by the director of education.<sup>236.</sup> The state superintendent may employ such clerical assistants as will enable him to properly care for the duties of his office.<sup>237.</sup>

#### OHIO (1880)

The state commissioner of schools appointed a state examining board,<sup>238.</sup> who issued life certificates.<sup>239.</sup> The commissioner was permitted to appoint an examiner to investigate charges as to fraudulent uses of school funds.<sup>240.</sup>

#### OKLAHOMA (1931)

The governor shall appoint, by and with consent of the

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229. North Dakota. Op. Cit. Sec. 1429.  
230. North Dakota. Revised Codes, 1895. Ch.9. Art.I.Sec.169.  
231. Ohio. Annotated Code, 1930. Sec. 352.  
232. Ibid., Sec. 154-4.  
233. Ibid., Sec. 154-49.  
234. Ibid., Sec. 367-5.  
235. Ibid., Sec. 7805.  
236. Ibid., Sec. 7808.  
237. Ibid., Sec. 353-1.  
238. Ohio. Revised Statutes 1880. Sec. 4065.  
239. Ibid., Sec. 4066.  
240. Ibid., Sec. 364.



senate, six members of the state board of education. (One member is ex-officio)<sup>241</sup>. One or more members of this board must be "lady or ladies".

The state board of education is also the board for vocational education,<sup>242</sup> and the state textbook commission.<sup>243</sup>

The state superintendent of instruction may appoint three high school inspectors and one stenographer.<sup>244</sup>

#### OKLAHOMA (1890)

The territorial governor appointed the superintendent of public instruction.<sup>245</sup>

#### OREGON (1930)

The governor shall appoint the state board for vocational education.<sup>246</sup> The board shall have full authority to provide for certification of teachers, directors, and supervisors of vocational education.<sup>247</sup>

#### OREGON (1887)

(No appointive power is recorded.)<sup>248</sup>.

#### PENNSYLVANIA (1932)

The governor shall, by and with advice and consent of the senate, appoint nine members of a council, to be known as the state council of education.<sup>249</sup> The governor, by and with advice and consent of two-thirds of the senate, shall appoint the superintendent of public instruction.<sup>250</sup>

The state council of education shall employ such assistants as it finds necessary.<sup>251</sup>

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241. Oklahoma. Statutes, 1931. Sec. 6741.

242. Ibid., Sec. 7192.

243. Ibid., Sec. 6741.

244. Ibid., Sec. 6759.

245. Oklahoma. Statutes, 1890. Sec. 6384.

246. Oregon. Code, 1930. Sec. 35-303.

247. Ibid., Sec. 35-305.

248. Oregon. Annotated Laws, 1887.

249. Pennsylvania. Statutes, Cumulative Supplement, 1928, Sec. 4887.

250. Ibid., Sec. 50a-206.

251. Ibid., Sec. 4898.

The superintendent of public instruction may, as a member of the executive board, approve establishment of divisions in administrative departments.<sup>252.</sup>

PENNSYLVANIA (1883)

The governor, by and with advice and consent of two-thirds of the senate, appointed the superintendent of public instruction.<sup>253.</sup>

The superintendent appointed one of his clerks to be deputy.<sup>254.</sup>

RHODE ISLAND (1923)

The state board of education shall elect the commissioner of education.<sup>255.</sup> The state board shall exercise all powers necessary to cooperate with the Federal Board for vocational education.<sup>256.</sup> The state board has authority to issue certificates<sup>257.</sup> and may annul the same for cause.<sup>258.</sup>

The commissioner of education may appoint an assistant commissioner.<sup>259.</sup> The commissioner may employ clerks within the limits of the funds appropriated and for such service.<sup>260.</sup>

RHODE ISLAND (1882)

The general assembly appointed one member from each county to serve on the state board of education. (Two members were ex-officio.)<sup>261.</sup>

The state board elected a commissioner of public education.<sup>262.</sup>

SOUTH CAROLINA (1932)

The governor shall appoint seven members of the state board of education. (Two are ex-officio).<sup>263.</sup>

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252. Pennsylvania. Laws, 1923. Act. No. 274. p.543.  
253. Pennsylvania. Digest of Laws, 1883. Art. IV. Sec. 8.  
254. Ibid., Art VI.  
255. Rhode Island. General Laws, 1923. Sec.913.  
256. Ibid., Sec. 961.  
257. Ibid., Sec. 999.  
258. Ibid., Sec. 1002.  
259. Ibid., Sec. 931.  
260. Ibid., Sec. 932.  
261. Rhode Island. Public Statutes, 1882. Ch.47.Sec.1.  
262. Ibid.,  
263. South Carolina. Code, 1932. Sec. 5282.

The state superintendent may employ clerks as the appropriation will justify.<sup>264</sup> He shall appoint two members of the county board of education.<sup>265</sup> He shall nominate the members of the state examiners, who shall be elected by the state board.<sup>266</sup>

SOUTH CAROLINA (1873)

(No appointment power is recorded.)<sup>267</sup>.

SOUTH DAKOTA (1929)

The governor shall appoint four members of the state board of education, one to be a city superintendent or principal, two from normal schools, and one to be a county superintendent.<sup>268</sup>

The state board of education with the governor has authority to appoint certain members of the county boards of education.<sup>269</sup>

The state superintendent may recommend, for appointment by the state board of education such officers and assistants as he may deem necessary to properly administer the federal aid acts. (Vocational)<sup>270</sup>. The state superintendent may issue certificates<sup>271</sup>. and has power to revoke any certificate for cause.<sup>272</sup>

SOUTH DAKOTA (1897)

The state superintendent appointed a deputy.<sup>273</sup>

TENNESSEE (1932)

The governor shall appoint nine members of the state board of education, each party to be represented by at least three members. (One member of the board is ex-officio).<sup>274</sup>

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264. South Carolina Code, 1932. Sec. 5282.

265. Ibid., Sec. 5335, Sec. 5336.

266. Ibid., Sec. 5292.

267. South Carolina. Revised Statutes, 1873.

268. South Dakota. Compiled Laws, 1929. Sec. 7407.

269. Ibid., Sec. 7387.

270. Ibid., Sec. 7409-5.

271. Ibid., Sec. 7388.

272. Ibid., Sec. 7388-2.

273. South Dakota. Annotated Statutes, 1897. Ch.17. Sec. 2415.

274. Tennessee. Code, 1933. Sec. 2453.

The governor shall appoint five members of the state textbook commission, to serve at his pleasure.<sup>275</sup> He shall appoint the commissioner of education.<sup>276</sup>

The state board of education shall appoint the directors of agriculture, trades and industry, home economics, rehabilitation.<sup>277</sup>

The commissioner of education shall appoint all heads and subordinates of the department of education except those appointed by the state board of education. Those to be appointed by the commissioner are the directors of high schools supervision, elementary school supervision, certification library and archeology, geology, and professor of registration.<sup>278</sup> The commissioner shall issue certificates through the director of certification,<sup>279</sup> and may revoke the same for cause.<sup>280</sup>

#### TENNESSEE (1884)

The governor nominated the state superintendent to be confirmed by the senate.<sup>281</sup>

#### TEXAS (1932)

The governor, by and with the consent of the senate, shall appoint the nine members of the state board of education.<sup>282</sup>

The state board of education shall appoint a textbook commission of five members.<sup>283</sup>

#### TEXAS (1879)

(No appointive power is recorded).<sup>284</sup>

#### UTAH (1931)

The governor shall appoint six members of the board of education. (Three members are ex-officio.)<sup>285</sup>

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275. Tennessee. Op. Cit.

276. Ibid., Sec. 2312.

277. Ibid., Sec. 2314-(1).

278. Ibid., Sec. 311-7.

279. Ibid., Sec. 2354.

280. Ibid., Sec. 2314-(15).

281. Tennessee. Code, 1884. Sec. 1175.

282. Texas. Revised Civil Statutes, 1932. Art. 2675. b-1.

283. Ibid., Art. 2675b-5 (

284. Texas. Revised Statutes, 1879.

285. Utah. Compiled Laws, 1917. Sec. 4505.

The state board is authorized to issue certificates<sup>286</sup>. and to revoke the same for cause.<sup>287</sup> The board may employ expert assistants.<sup>288</sup>

The state superintendent may appoint a deputy.<sup>289</sup> Certain state leaders of the agricultural college of Utah are designated by law to be supervisors over the state for the high schools and district schools in the fields of industrial education.<sup>290</sup>

#### UTAH (1888)

(No appointive power is recorded.)<sup>291</sup>.

#### VERMONT (1932)

The governor shall appoint three members as a state board of education.<sup>292</sup> He may remove members of the board for cause.<sup>293</sup>

The state board of education shall appoint the commissioner of education.<sup>294</sup> The board shall employ such competent helping teachers as board may authorize.<sup>295</sup> The state board shall issue certificates to teachers,<sup>296</sup> and may revoke certificates at any time.<sup>297</sup> The board shall employ such inspectors, lecturers, and clerical assistants as it needs.

#### VERMONT.(1880)

The general assembly elected the state superintendent of public instruction.<sup>298</sup>

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286. Utah. Op. Cit., Sec. 4506.

287. Ibid., Sec. 4512.

288. Ibid., Laws 1925. Sec. 4505.

289. Ibid., Compiled Laws, 1917. Sec. 4517.

290. Ibid., Sec. 4537.

291. Utah. Compiled Laws, 1888.

292. Vermont. Laws, 1923. P. 47. Act. No. 32.

293. Vermont. General Laws, 1917. Sec. 1175.

294. Vermont. Laws, 1923. P. 51. Act. 32.

295. Vermont. General Laws, 1917. Sec. 1202.

296. Ibid., Sec. 1203.

297. Ibid., Sec. 1173.

298. Vermont. Revised Code of Vermont, 1880. Ch.27. Sec.452.

VIRGINIA (1930)

The governor shall appoint the state board of education of seven members, subject to confirmation of the general assembly.<sup>299</sup> He shall appoint the state superintendent of instruction in the same way.<sup>300</sup>

The state board of education is the board for vocational education and is authorized to provide for proper supervision and management of such schools as receive appropriation.<sup>301</sup> The board shall divide the state into divisions, with a minimum of one county or one city in a division, and shall appoint a division superintendent for each.<sup>302</sup> The state board may select examiners and inspectors.<sup>303</sup>

VIRGINIA (1873)

The state board of education appointed district school trustees.<sup>304</sup>

WASHINGTON (1931)

The governor shall appoint three members of the state board of education. (Three members are ex-officio.<sup>305</sup> The governor shall appoint the regents of the university of seven members,<sup>306</sup> and board of five regents for the state college.<sup>307</sup> The governor shall appoint trustees for all normal schools of the state.<sup>308</sup>

The state superintendent shall appoint one assistant superintendent, one deputy as inspector, and office force.<sup>309</sup> The superintendent shall appoint the necessary experts, assistants, and employees for vocational education.<sup>310</sup>

WASHINGTON (1881)

The governor appointed, by and with consent of the council, one suitable person from each judicial district to serve

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299. Virginia. Code. 1930. Sec. 612.

300. Ibid., Sec. 630.

301. Ibid., Sec. 604.

302. Ibid.

303. Ibid., Sec. 610.

304. Virginia. Code, 1873. Ch. 78. Sec. 7. (4)

305. Washington. Revised Statutes, 1931. Sec. 4525.

306. Ibid., Sec. 4554.

307. Ibid., Sec. 4576.

308. Ibid., Sec. 4604.

309. Ibid., Sec. 4524.

310. Ibid., Sec. 4922.

with the territorial superintendent as the territorial board of education.<sup>311.</sup>

The territorial board granted certificates.<sup>312.</sup>

#### WEST VIRGINIA (1930)

The governor shall appoint six members of the board of education by and with consent of the senate. (One member is ex-officio).<sup>313.</sup>

The state superintendent shall have authority to appoint assistants and such other employees as shall be necessary.<sup>314.</sup> He shall grant certificates<sup>315.</sup> and revoke the certificate of any teacher for cause.<sup>316.</sup> The state superintendent shall have authority to appoint a state supervisor for colored schools.<sup>317.</sup>

#### WEST VIRGINIA (1891)

(No appointive power is recorded).<sup>318.</sup>

#### WISCONSIN (1931)

The governor shall appoint nine members to be a state board of vocational education, three to be employees, and three to be practical farmers.<sup>319.</sup> The governor shall appoint the regents of the university one from each congressional district, and four from the state at large, of whom at least two shall be farmers and two shall be engaged in manual trades.<sup>320.</sup> He shall appoint ten members for the board of regents for normal schools, one of whom at least shall be a woman.<sup>321.</sup>

The state superintendent may appoint the deputies, assistants, experts, clerks, and stenographers as may be ne-

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311. Washington. Code, 1881. Sec. 3163.

312. Ibid., Sec. 3165.

313. West Virginia. Code, 1930. Sec. 1726.

314. Ibid., Sec. 1749.

315. Ibid., Sec. 1820.

316. Ibid., Sec. 1836.

317. Ibid., Sec. 1749.

318. West Virginia. Code, 1891.

319. Wisconsin, Statutes, 1931. Sec. 41.43.

320. Ibid., Sec. 36.02.

321. Ibid., Sec. 37.02.

cessary for his department.<sup>322</sup>. He may employ supervising teachers and remove the same.<sup>323</sup>. He may annul a certificate granted by a county superintendent.<sup>324</sup>.

#### WISCONSIN (1878)

The state superintendent was authorized to employ an assistant.<sup>325</sup>.

#### WYOMING (1931)

The governor has approval power as follows:

The state superintendent, with his approval, may appoint six members of the state board of education. (One member is ex-officio.)<sup>326</sup>.

The state board of education, with the approval of the governor, may appoint a commissioner of education.<sup>327</sup>. The board shall certificate teachers,<sup>328</sup> and provide agents to assist in general supervisory, advisory, and inspectorial duties of the state department of education.<sup>329</sup>.

#### WYOMING (1887)

The territorial librarian was territorial superintendent of public instruction.<sup>330</sup>.

Legislation from 1924 to 1930 which provided appointment

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322. Wisconsin. Op.Cit. Sec. 14.71.

323. Ibid., Sec. 39.14.

324. Ibid., Sec. 39.27.

325. Wisconsin. Revised Statutes, 1878. Ch. 11. Sec. 165.

326. Wyoming. Revised Statutes, 1931. Sec. 99-104.

327. Ibid., Sec. 99-117.

328. Ibid., Sec. 99-115. Sec. 99-125.

329. Ibid., Sec. 99-116.

330. Wyoming. Revised Statutes, 1887. Sec. 3905.



power, included the following:

- (a) Arkansas adopted a new school law which gave the governor power to appoint the state board and the board power to appoint a commissioner of education.<sup>331</sup>.
- (b) California provided for the appointment of the state board of education, and for the deputy and assistant for the state superintendent.
- (c) Colorado provided a state board for vocational education.
- (d) Florida created the office of state supervisor of high schools and of elementary schools.
- (e) Georgia provided for state supervision of schools.
- (f) Idaho extended the term of office of the state superintendent.
- (g) Illinois placed a Director and Assistants in the department of registration and education.
- (h) Minnesota continued the department of education under an appointive state board.
- (i) Montana provided for the appointment of the state board.
- (j) New York amended the constitution providing for a department of education, and added a deputy commissioner.
- (k) Ohio abolished the state board of education and placed the department of education under the superintendent of public instruction.
- (l) Pennsylvania provided for a number of educational boards and commissioners.
- (m) Rhode Island provided for the election of the state board by the legislature.
- (n) South Carolina extended the term of the state superintendent.
- (o) Tennessee reorganized the department of education and made the administrative officers appointive.
- (p) Texas amended the constitution so that the board of education may be appointed or elected.

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<sup>331</sup>. Arkansas, Laws of 1931. Act. No. 160.

- (q) Utah provided for the appointment of the state board by the governor.
- (r) Virginia amended the constitution, reorganized education, and provided for the appointment of the state superintendent.
- (s) Washington reorganized the state board of education.<sup>322</sup>.

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332. Library of Congress. Legislative Reference Service.  
State Law Index. Vols. I, II, III. 1925-1930.

TABLE X

APPOINTMENT POWER OF GOVERNORS, STATE BOARDS OF EDUCATION,  
AND STATE SUPERINTENDENTS OR COMMISSIONERS.

PERIOD I, 1878-1888  
and  
PERIOD II, 1922-1932

1878-1888		1922-1932	
<b>ALABAMA</b>		St. Bd. Ed.	10 of 12 members
Stat.1886			
Stat.1927			
Governor			
St. Board		(a) Course of Study com. 7	
		(b) Textbook commission 7	
		(c) Advisory Bd.Negro.Ed.7	
St. Supt.	Part time co. supts.	(a) Nominates clerical and professional assistants 9 divisions	
<b>ARIZONA</b>		St. Bd. Ed.	3 of 5
Stat.1887			
Stat.1928			
Governor			
St. Board		Executive officers, deputies, clerks, and employees of Board	
St. Supt.	(a) St.Bd.Exam. 2 of 3 (b) Co.Bd.Exam.		
<b>ARKANSAS</b>			
Stat.1884			
Stat.1932			
Governor			
St. Board		State Commissioner of Education	
St. Com.		Bd. for Voc. Ed.	

	1878-1888	1922-1932
<b>CALIFORNIA</b>		
Stat.1885		St. Bd. Ed. 10
Stat.1929		
Governor		
St. Board		(a) Head of each division (b) Executive sec'y
St. Supt		(a) 1 dep'y, 1 sec'y, 1 head of statistics (b) other necessary experts and assistants
<b>COLORADO</b>		
Stat.1883		St. Bd. of Agri. 8 of 10
Stat.1932		
Governor		
St. Board		St. Bd. of Exam. 8 of 9
St. Supt.		
<b>CONNECTICUT</b>		
Stat.1887		St. Bd. Ed. 9 of 11
Stat.1930		
Governor		
St. Board	Sec'y	(a) Sec'y, assistants, a- gents, employees as nec- essary (b) Bd. for Voc. Ed.
St. Supt.		
<b>DELAWARE</b>		
Stat.1874		(a) St. Bd. Ed. 6
Stat.1932		(b) Com. of Ed.
Governor		(c) Co. Sch. Com. each Co.
St. Board		
St. Com.		

	1878-1888	1922-1932
FLORIDA		St. Bd. Control, higher education 5
Stat.1881		
Stat.1927		
Governor		
St. Board		(a) St.Supt.Pub.Ins. (b) Supv. elem. sch. (c) Supv. phys.tr. and health educa.
St. Supt.		(a) 2 rural inspectors (b) 1 grading committee
GEORGIA		
Stat.1882		St. Bd. Ed. 4 of 5
Stat.1928		
Governor		
St. Board		
St. Supt.		(a) 3 Supv. Elem. Sch. (b) 1 Supv. high sch.
IDAHO		St. Bd. Ed. 5 of 6
Stat.1887		
Stat.1932		
Governor		
St. Board		(a) Commissioner of Educa. (b) Specialists, assistants, as needed
St. Com.		
ILLINOIS		St.Norm.Sch.Bd. 9 of 11
Stat.1874		
Stat.1929		
Governor		
St. Board		
St. Supt.		

	1878-1888	1922-1932
INDIANA		St. Bd. Ed. 6 of 13
Stat.1881		
Stat.1931		
Governor		
St. Board		(a) Assistants necessary to administer federal aid
St. Supt.		(a) Clerks for office (b) Elem.Sch. inspector (c) High Sch. inspector
IOWA		
Stat.1880		(a) St. Bd. Ed. 9
Stat.1931		(b) Educa.Exam. Bd. 3 of 5
Governor		
St. Board		Secretary
St. Supt.		(a) Deputy (b) Chief clerk (c) 3 sch. inspectors
KANSAS		
Stat.1885		(a) St.Bd.Ed. 8 of 9
Stat.1923		(b) Bd. Regents in chg. higher education 9
Governor		
St. Board		
St. Supt.		(a) 4 assistants, Elem. and High Sch. inspectors (b) Chief assistant
KENTUCKY		
Stat.1887		(a) Educational Commission 3 of 11
Stat.1930		(b) Textbook Commission 10 of 11
Governor		
St. Board		
St. Supt.	2 clerks	(A) Assistant (b) Directors, Statistics, Inspection, Cert.Exam. Rural Negro Ed., H.S., Voc. Ed. and needed clerks

1878-1888

1922-1932

LOUISIANA	St. Bd. Ed. 6 of 8	(a) St. Bd. Ed. 3 of 11 (b) Gov. Bds. for La. St. Univ. and Mech. College
Stat. 1888 Stat. 1932 Governor	Parish Supts.	(a) Gov. Bds. for all other higher educa. institutions (b) St. Exam. Commission
St. Board		
St. Supt.		
MAINE	St. Supt.	State Commissioner of Education
Stat. 1884 Stat. 1930 Governor		
St. Board		
St. Com.		
MARYLAND	St. Bd. Ed. 4 of 6	(a) St. Bd. Ed. 7 (b) Co. Bds. Ed.
Stat. 1878 Stat. 1924 Governor		
St. Board		State Superintendent
St. Supt.		
MASSACHUSETTS	St. Bd. Ed. 8 of 12	(a) St. Bd. Ed. 6 of 7 (b) Commissioner of Educa. (c) Directors, Pub. Lib., Immigration, Blind.
Stat. 1882 Stat. 1927 Governor	Secretary	
St. Board		
St. Com.		(a) St. Advisory Council (b) 4 Division Directors

	1878-1888	1922-1932
<b>MICHIGAN</b>		
Stat. 1890		
Stat. 1929		
Governor		
St. Board		
St. Supt.	Deputy	Deputy and such assistants as necessary
<b>MINNESOTA</b>		
Stat. 1878	State Superintendent	St. Bd. Ed. 5
Stat. 1927		
Governor		
St. Board		(a) State Commissioner of Ed. (b) Deputy Commissioner (c) 5 Dept. Heads, 11 assistants
St. Com.		Subordinate officials
<b>MISSISSIPPI</b>		
Stat. 1880		
Stat. 1930		
Governor		
St. Board	Co. supts.	
St. Supt.		(a) St. Bd. Exams. 3 (b) Assistant, Chief Clerk Supervisors
<b>MISSOURI</b>		
Stat. 1889		Regents for Teachers Col.
Stat. 1930		7 each
Governor		
St. Board		St. Advisory Com. of Voc. Ed.
St. Supt.	Chief clerk	Chief clerk



	1878-1888	1922-1932
MONTANA	State superintendent	St. Bd. Ed. 8 of 11
Stat.1888		
Stat.1921		
Governor		
		(a) St. Bd. Exam.
St. Board		
St. Supt.		
NEBRASKA	Bd. of Control for	Bd. Voc. Ed. 1 of Bd.
Stat.1881	State Normal 5 of 7	
Stat.1929		
Governor		
St. Board		
		Deputy
St. Supt.		
NEVADA		
Stat.1885		
Stat.1929		
Governor		5 Deputy superintendents
St. Board		
St. Supt.		
NEW HAMPSHIRE	State superintendent	St. Bd. Ed. 5 of 8
Stat.1878		
Stat.1926		
Governor		
		(a) State Commissioner of Ed.
St. Board		(b) Supervisors, inspectors, accountants, clerks
		(c) Supt. in each Supv. Union
St. Com.		

	1878-1888	1922-1932
<b>NEW JERSEY</b>		
Stat.1878		(a) St. Bd. Ed. 10
Stat.1930		(b) State Commissioner of Education
Governor		
St. Board	County superintendents	
St. Com.	1 assistant	(a) 5 assistant commissioners (b) County superintendents
<b>NEW MEXICO</b>		
Stat.1880	Territorial Supt.	(a) St. Bd. Ed. 5 of 7
Stat.1929		(b) Educational Budget Auditor
Governor		
St. Board		
St. Supt.		1 assistant
<b>NEW YORK</b>		
Stat.1881		
Stat.1930		
Governor		(a) State Commissioner of Ed. (b) Deputy Commissioner
St. Regents		
St. Com.	Deputy and clerks	(a) Assistant Commissioners as he deems necessary (b) All other employees (c) Medical inspector
<b>NORTH CAROLINA</b>		
Stat.1883		
Stat.1924		
Governor		
St. Board	(a) agent for swamp lands (b) engineer surveyor for swamp lands	Supervisors, assistants as may be necessary. (b) Director, negro educa.
St. Supt.		

1878-1888		1922-1932
NORTH DAKOTA		St. Bd. Ed. 3 of 5
Stat.1895		
Stat.1925		
Governor		
St. Board	Agent for school lands	(a) Supervisors, teachers for vocational education (b) High school inspector
St. Supt.		Deputy inspector, clerks
OHIO		(a) St. Bd. Voc. Ed. 4 (b) State Superintendent (c) Directors, Agri., Commerce, and Industrial Relations
Stat.1880		
Stat.1930		
Governor		
St. Board		Directors, assistants, supervisors for vocational education
St. Supt.	State examining board	(a) Exam. Bd. 5 (b) All clerks necessary
OKLAHOMA		(a) St. Bd. Ed. 6 of 7 (b) St. Textbook Com. (c) St. Bd. Voc. Ed.
Stat. 1890	Territorial superintendent	
Stat. 1931		
Governor		
St. Board		
St. Supt.		(a) 3 high school supv. (b) stenographer
OREGON		St. Bd. Voc. Ed.
Stat.1887		
Stat.1930		
Governor		
St. Board		Director, Supervisors for Voc. Ed.
St. Supt.		

	1878-1888	1922-1932
<b>PENNSYLVANIA</b>		
Stat. 1883		(a) Council of Ed. 9
Stat. 1932		(b) State Superintendent
Governor		
St. Council		As many assistants as necessary
St. Supt.		As member of executive board approves divisions in administrative departments
<b>RHODE ISLAND</b>		
Stat. 1882		
Stat. 1923		
Governor		State Commissioner of Education
St. Board		
St. Com.		Assistant Commissioners and Necessary clerks
<b>SOUTH CAROLINA</b>		
Stat. 1873		St. Bd. Ed. 7 of 9
Stat. 1932		
Governor		St. Exam. Bd.
St. Board		
St. Supt.		2 members co. bds.
<b>SOUTH DAKOTA</b>		
Stat. 1897		St. Bd. Ed. 4
State. 1929		
Governor		(a) Certain members Co. Bds. Ed.
St. Board		(b) Assistants to Admin. of Fed. Aid Acts.
St. Supt.	Deputy	

	1878-1888	1922-1932
<b>TENNESSEE</b>		
Stat.1884		(a) St. Bd. Ed. 9 of 11
Stat.1932		(b) St. Textbook Com. 5
Governor		(c) State Commissioner of Education
St. Board		Directors, Agri., Trade & Indus. and Home Ec.
St. Com.		Directors, High School Supv., Elem.Sch.Supv., Library, Registration
<b>TEXAS</b>		
Stat.1879		St. Bd. Ed. 9
Stat.1932		
Governor		
St. Board		State Textbook Com. 5
St. Supt.		
<b>UTAH</b>		
Stat.1888		St. Bd. Ed. 3 of 6
Stat.1931		
Governor		
St. Board		Expert assistants
St. Supt.		Deputy
<b>VERMONT</b>		
Stat.1880		St. Bd. Ed. 3
Stat.1932		
Governor		(a) State Commissioner of Ed.
St. Board		(b) Deputy Commissioners
		(c) Inspectors, Clerks as needed
St. Com.		

	1878-1888	1922-1932
<hr/>		
VIRGINIA		(a) St. Bd. Ed. 7
Stat.1873		(b) State superintendent
Stat.1930		
Governor		
<hr/>		
St. Board	District Trustees	
<hr/>		
St. Supt.		(a) Supv. for Voc. Ed.
		(b) Exam. inspectors, clerks
		(c) Division superintendents
<hr/>		
WASHINGTON		(a) St. Bd. Ed. 3 of 6
Stat.1881		(b) Regents for Univ. 7
Stat.1931		(c) Regents State Col. 5
Governor		(d) Trustees for Normals
<hr/>		
St. Board		
<hr/>		
St. Supt.		Assistant and office force
		(b) Expert assistants for vocational education
<hr/>		
WEST VIRGINIA		St. Bd. Ed. 6 of 7
Stat.1891		
Stat.1930		
Governor		
<hr/>		
St. Board		
<hr/>		
St. Supt.		(a) Assistants
		(b) Supv. colored schools
<hr/>		
WISCONSIN		St. Bd. Voc. Ed. 9
Stat.1878		(b) Regents 1 each Cong.
Stat.1931		Dist. and 4 at large
Governor		(c) Regents for Normal Sch.10
<hr/>		
St. Board		
<hr/>		
St. Supt.	Assistant	(a) Deputies, Assistants, Experts, Clerks
		(b) Supervising teachers
<hr/>		

1878-1888

1922-1932

WYOMING

Stat.1887

Stat.1931

Governor

St. Board

(a) State Commissioner of  
Education

(b) Agents, Inspectors, as  
needed

St. Supt.

(a) State Board of Education

6 of 7

### SUMMARY

Of the 24 state constitutions adopted from 1780 to 1880 and still in force in the states, Pennsylvania, alone provided for the appointment of the chief educational officer of the state. The governor, with consent of two-thirds of the senate, appoints the state superintendent. Colorado provided for the appointment of land commissioners whose function was disposal of school lands according to law. Of the 24 constitutions adopted since 1880, ten states make direct provisions for appointments of state boards of education, and Ohio, through an amendment of 1912, directs her governor to appoint the state superintendent without restrictions.

The selected statutes and laws for one period of data range from 1873 to 1891, with those from 37 states in the ten year period from 1878 to 1888.

Eleven of the 48 states were still under territorial government and the appointive power in those were of a territorial nature. Seven states have no appointive power recorded for the educational field at this early period. These are California, Florida, Illinois, Nevada, Oregon, South Carolina, and Texas.

Eight states record a meager power of appointment as connected with draining swamp school lands, examining boards, a clerk, or an assistant. These are Alabama, Kansas, Michigan, Mississippi, Missouri, North Carolina, Ohio, and Wisconsin.

Five states indicate stronger appointive power. New Jersey's



state board appointed county superintendents, New York's senate and assembly elected the state superintendent, and 19 members of the regents, with but two ex-officio members; Rhode Island's general assembly appointed the state board, who elected a state commissioner; Vermont's general assembly elected the state superintendent; and Massachusetts's governor appointed a board, whose secretary was the chief officer of education.

The governors of seven states were empowered to appoint, by and with consent of the senate or assembly, the chief educational officer. In two states the power was limited; Georgia repealed the law in 1894, and Delaware specified that the state superintendent was to receive "no emolument". The other five states were Maine, Minnesota, New Hampshire, Pennsylvania, and Tennessee.

The data for the recent period used for comparison ranges from 1921 to 1933, with 41 states in the period from 1927 to 1932.

State laws of this period direct the chief officer in education in eighteen states to be appointed, eight by the governor, six by boards who are appointed by the governor, and four by state boards of education, elected or ex-officio. The eight states in which the chief officer is appointed by the governor are Delaware, Maine, Massachusetts, New Jersey, Tennessee, Ohio, Pennsylvania and Virginia. The six states in which the state boards, who are appointed by the governor, appoint the chief official, are Arizona, Idaho, Maryland, New Hampshire, Vermont, and Minnesota. The four states in which the chief official is appointed by a state board, which has been elected or is ex-officio, are Arkansas, Florida, New

York, and Rhode Island.

In addition to these, Alabama, California, and Kentucky have Divisions in the Educational Department headed by appointed specialists. They are nominated by the chief officer for election by the state board; Michigan and Wisconsin direct their chief officers to appoint as they deem necessary; Georgia and West Virginia provide for appointed supervisors and assistants; Nevada and Virginia have appointed division superintendents; Wyoming, in addition to an elected state superintendent has a Commissioner of Education who is appointed; Kentucky, North Carolina, and West Virginia have directors of negro education; South Dakota, Illinois, Indiana, Iowa, Kansas, Montana, Nebraska, and Oklahoma provide for appointed inspectors, supervisors, assistants, and deputies; New Mexico provides for an educational budget auditor. Thirty-eight states have some type of appointed educational specialists or experts in the personnel of the office of the chief executive of education.

In thirty-nine states the governor has some appointive power in naming the state board of education, varying from a single member to naming the entire board. In the other states the board is ex-officio or elected by the legislature. Wyoming is the only state which directs the state superintendent to appoint the state board of education.

In twenty-five states the state boards of education exercise appointive power, naming officers of education varying in importance from office clerks to the Commissioner of Education of the

state. In thirty-four states the chief officer has appointive power varying in importance as much as that of the state board. Where the chief officer is himself an appointee, he is usually permitted more power of appointment of specialists among his subordinates than when that officer is elective. In New Jersey, all subordinates, including the county superintendents, are appointed by the Commissioner of Education.

In every state a teacher must be licensed. The power to certificate, which is an indirect appointive power, limiting the list of eligible persons for teaching positions, is provided by statute and the authority given to state superintendents, state boards, examining boards, and in a few instances to county superintendents. In the case of vocational teachers, federal authorities must approve the licenses. The power to revoke certificates for cause is usually placed by statute in the authority which grants certificates.

Removal power is specified by statute and varies from that of the Commissioner of Education in New York, who may remove any subordinate who disobeys one of the rules of the Commissioner, to that of elective officers who must be removed by due process of law.

In view of the facts and conditions stated, it seems evident that appointive power in federal and state educational control has definitely and more or less continuously increased.

## CHAPTER IV

### ORDINANCE POWER OF EDUCATIONAL OFFICIALS

The lowliest, yet by no means the least effective part of legislation consists of "rules and regulations" that have the force of law. 1. The immense burden of legislation has caused this phrase to be written into the law in connection with the powers and duties of administrative officials and it forms the authority for powers of control exercised through ordinances. This ordinance power has attained much significance in administrative law discussions and is defined as statutory power given to administrative officials for the purpose of carrying out the details of a statute, or putting into effect admittedly conditional statutes. Interpretative regulations express the meaning of a statute, they are not themselves law. More significant than the saving of time of legislative bodies are the advantages given to administrative procedure, and the opportunity 2. for the utilization of the judgments of specialists.

James Hart wrote in 1925 of the Ordinance Making powers of the President of the United States that except in special cases the President may delegate his ordinance making power to heads of departments, whose acts in such cases are in law as his own. 3. Congress,

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1. Comer, John Preston. Legislative Functions of National Administrative Authorities. 1927. p. 23-29.

2. Ibid.

3. The Ordinance Making Powers of the President of the United States. P. 188.

however, passed a law that the head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his own department<sup>4.</sup> but this refers more directly to the conduct of clerks, disposition of business, and preservation of records. The regulations which have the ordinance-making power are of a different kind. They are binding on all citizens who may be affected by them, and have, in fact, the character of laws.<sup>5.</sup>

Discretionary authority in educational matters was granted to the Commissioner of Agriculture by Congress in 1887.<sup>6.</sup> The expressions "as far as practicable," "as to him shall seem most important," and "as will best promote the purpose of this act," contain a certain amount of discretion and likewise, power. This was increased in an Act of 1914<sup>7.</sup> where the Secretary of Agriculture must approve plans for state extension projects. Similar powers, closely akin to ordinance-making power, are granted to the Federal Board for Vocational Education<sup>8.</sup> under the Department of the Interior, through the Act of 1917.

The Board's approval of standards which each state is compelled to set up in regard to specific matters is required in this act. In 1920 the Board's powers were extended to include making of the rules and regulations "that may be necessary or appropriate to carry into effect the provisions of this act" and to approve plans "if believed to be

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4. Rev. Stat., Sec. 161.

5. Lowell, A. Lawrence. The Governments and Parties in Continental Europe. 1897. Vol. 1. p. 44-45.

6. U. S. 24 Stat. 441.

7. U. S. 38 Stat. 373.

8. U. S. 39 Stat. 932.

9.  
feasible."

These are the legal bases for some of the federal regulations that appear in the fields of vocational education, co-operative extension service, experiment stations, and agricultural colleges. The War Department has authority to make regulations concerning the Reserve Officer's Training Corps in state educational institutions.<sup>10.</sup> The Radio Commission was given authority in the Radio Act of 1927 which has led to a wide control of educational broadcasting at schools and colleges. Inability to confine the voice of the radio within the borders of a state is one of the natural changes which calls for federal administration of an educational medium. The Act of 1927 uses the term, "serving zones," but a method of using the radio for state educational functions has not been as yet satisfactorily effected. Even the long established fact that education is a function of the state does not deter the proper administration official from granting educational "hours" to national agencies. Ordinance power in such instances often leads to special legislation.

Very closely related to ordinance-making powers of administrators is the power of adjudication, settling of controversies arising in the field of education among subordinate officials, or among local school boards, teachers, or patrons. Review of decisions made by county superintendents, and the right to settle cases of appeal, as authorized by the proper law-making tribunals will therefore be discussed in this study in connection with ordinance-making power.

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9. U. S. 41 Stat. 736.

10. Rev. Stat. 1225. 10 U.S.C.A. Sec. 385.

The right of appeal to the United States Supreme Court on questions of education in the states,--this Court being the ultimate court of appeal--, makes its decisions of the utmost importance. For appeals that illustrate how this high court has changed its policy of non-interference with state educational controversies to one of review when state laws unreasonably interfere with the liberty of parents and guardians to direct the upbringing and education of children under their control, the cases of Meyer 11. v. Nebraska, 12. Zucht v. King, and the Oregon Case may be mentioned. 13. The Nebraska Case and similar ones in Iowa and Ohio resulted in judgments that declared laws in those three states to be unconstitutional. They were state attempts to restrict the teaching of a foreign language. The case of Zucht v. King resulted in a judgment that upheld an ordinance which required children to present a certificate of vaccination before they attended a public school. The Oregon case resulted in a decision that a state cannot compel children to attend only public schools.

In controversies between a state and local authority, the  
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case of *Barbier v. Connolly* and that of *Kies v. Lowry* are illustrations of how the Supreme Court upheld the rights of states to pre-  
15.  
scribe regulations for educational purposes.

There is but one state which wrote into the constitution an expression of ordinance power for state educational authorities

11. 262 U. S. 390.  
12. 260 U. S. 174-177.  
13. 268 U. S. 510.  
14. 113 U. S. 27-32.  
15. 199 U. S. 233-240.

and that is carefully guarded by reserving to the legislature the right to revise, or amend, or repeal. Virginia's constitution places in the state board of education the power to make rules and regulations with the force and effect of law.<sup>16.</sup>

The ordinance powers as expressed in state laws of the early period from 1873 to 1891 are as follows:

- Alabama, 1886. (No ordinance or judicial power was recorded.)<sup>17.</sup>
- Arizona, 1887. The state board adopted rules and regulations for the government of the public schools, adopted uniform textbooks, and prescribed a course of study for the schools.<sup>18.</sup> The board of examiners adopted rules and regulations for examinations of teachers.<sup>19.</sup>
- Arkansas, 1884. The state superintendent furnished suitable questions for examinations of teachers.<sup>20.</sup>
- California, 1885. The state board of education had power to adopt rules and regulations for governing the public schools, recommend rules for examinations, a course of study, and a list of books for district libraries.<sup>21.</sup>
- Colorado, 1883. The state board had power to adopt rules and regulations for the governing of the public schools.<sup>22.</sup>
- Connecticut, 1887. The state board shall direct what books shall be used.<sup>23.</sup>
- Delaware, 1874. (No ordinance or judicial power was recorded.)<sup>24.</sup>
- Florida, 1881. The state board prescribed the manner of making appeals and conducting arbitration.<sup>25.</sup>
- Georgia, 1882. (No ordinance or judicial power was recorded.)<sup>26.</sup>

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16. Virginia. Constitution, 1902. Article IX. Sec. 132.

17. Alabama. Code, 1886.

18. Arizona. Revised Statutes, 1887. Sec. 1475.

19. Ibid., Sec. 1481.

20. Arkansas. Digest of Statutes, 1884. Sec. 6149.

21. California. Codes and Statutes, 1885. Sec. 1521.

22. Colorado. General Statutes, 1883. Sec. 2997.

23. Connecticut. General Statutes, 1887. Sec. 2096.

24. Delaware. Revised Code, 1874.

25. Florida. Digest of Laws, 1881. Ch. 180. Sec. 3.

26. Georgia. Code, 1882.



- Idaho, 1887. The territorial superintendent decided disputed points in school law.<sup>27</sup>
- Illinois, 1874. The state superintendent had power to make rules and regulations for carrying into effect the laws establishing and maintaining free schools in the state and was legal advisor to school officers.<sup>28</sup>
- Indiana, 1881. (No ordinance or judicial power was recorded.)<sup>29</sup>
- Iowa, 1880. The superintendent of public instruction rendered written opinions on school law and decided cases appealed from the decision of the county superintendent.<sup>30</sup>
- Kansas, 1881. (No ordinance or judicial powers recorded.)<sup>31</sup>
- Kentucky, 1887. The state board prepared rules and regulations for the government of the common schools.<sup>32</sup>
- Louisiana, 1888. The state superintendent settled disputes between school directors but his decision was not final.<sup>33</sup>
- Maine, 1884. (No ordinance or judicial power was recorded.)<sup>34</sup>
- Maryland, 1878. The state board had power to enact by-laws for the administration of the school system, to explain the intent of the law, and to decide controversies arising over school law.<sup>35</sup>
- Massachusetts, 1882. (No ordinance or judicial powers recorded.)<sup>36</sup>
- Michigan, 1882. The state board was empowered to make by-laws and regulations<sup>37</sup> and to prepare questions suitable for examination for certificates.<sup>38</sup> The state superintendent was empowered to make regulations for conducting proceedings under school laws.<sup>39</sup>
- Minnesota, 1878. (No ordinance or judicial power recorded.)<sup>40</sup>

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27. Idaho. Revised Statutes, 1887. Sec. 631.

28. Illinois. Revised Statutes, 1874. Ch. 122. Sec. 8.

29. Indiana. Statutes, 1881.

30. Iowa. Code, 1880. Sec. 1579.

31. Kansas. General Statutes, 1881.

32. Kentucky. General Statutes, 1887. Ch. 96, Sec. 5.

33. Louisiana. Laws, 1888. Act. 81. Sec. 2.

34. Maine. Revised Statutes, 1884.

35. Maryland. Revised Code, 1878. Art. 27, Sec. 11.

36. Massachusetts. Public Statutes, 1882.

37. Michigan. Annotated Statutes, 1882. Sec. 4964.

38. Ibid., Sec. 4970.

39. Ibid., Sec. 5028.

40. Minnesota. Statutes, 1878.

- Mississippi, 1880. The state board had power to decide appeals from county superintendents and from state superintendents. If all conditions were fulfilled, the decision of the state board was final.<sup>41</sup>
- Missouri, 1889. (No ordinance or judicial power is recorded.)<sup>42</sup>
- Montana, 1888. The superintendent had power to adopt a course of study and to make rules and regulations for all public schools.<sup>43</sup>
- Nebraska, 1881. The state superintendent organized normal institutes when he "deemed it practicable."<sup>44</sup> He decided disputed points in school law and his decisions were final until reversed by courts.<sup>45</sup>
- Nevada, 1885. The state board of education adopted rules for county examinations and prescribed a course of study in public schools.<sup>46</sup>
- New Hampshire, 1878. (No ordinance or judicial power was recorded.)<sup>47</sup>
- New Jersey, 1877. The state board of education formed by-laws for the government of the board, prescribed and caused to be enforced, rules and regulations necessary for carrying into effect school laws of the state.<sup>48</sup> They prescribed rules and regulations for teachers institutes. They decided appeals and had power to revoke licenses.<sup>49</sup>
- New Mexico, 1880. (No ordinance or judicial power was recorded.)<sup>50</sup>
- New York, 1881. The regents had power to make such by-laws and ordinances as they judged expedient for the accomplishment of the trust reposed in them, were in control of higher learning.<sup>51</sup>

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41. Mississippi. Revised Code, 1880. Sec. 691.

42. Missouri. Revised Statutes, 1889.

43. Montana. Compiled Laws, 1888.

44. Nebraska. Compiled Statutes, 1881, Ch. 79. Subdivision VIII. Sec. 2.

45. Ibid., Sec. 4.

46. Nevada. General Statutes. 1885. Sec. 1286.

47. New Hampshire. General Laws. 1878.

48. New Jersey. Revision of Laws. 1877.

49. Ibid., Sec. 5, 13, 18a.

50. New Mexico. General Laws, 1880.

51. New York. Statutes, 1881. Ch. XV. Sec. 16.

North Carolina, 1883. The state board of education made by-laws for the government and exercise of its powers.<sup>52</sup>  
They had full power to legislate and make all needful rules and regulations for the government of public schools.<sup>53</sup>

North Dakota, 1895. The superintendent of public instruction prescribed rules for examination and for holding institutes.<sup>54</sup>  
He prescribed a course of study.<sup>55</sup>

Ohio, 1880. (No ordinance or judicial power was recorded.)<sup>56</sup>

Oklahoma, 1890. (No ordinance or judicial power was recorded.)<sup>57</sup>

Oregon, 1887. The state board of education authorized text books, prescribed rules and regulations for the government of public schools, and set as a board of examiners.<sup>58</sup> The state superintendent called meetings when he deemed it advisable, and decided questions of dispute.<sup>59</sup>

Pennsylvania, 1883. (No ordinance or judicial power was recorded.)<sup>60</sup>

Rhode Island, 1882. (No ordinance or judicial power was recorded.)<sup>61</sup>

South Carolina, 1873. The state board of education was empowered to take such action as would advance the cause of common schools in the state.<sup>62</sup>

South Dakota, 1897. The state superintendent had power to prescribe rules and regulations for county normal institutes.<sup>63</sup>

Tennessee, 1884. (No ordinance or judicial power was recorded.)<sup>64</sup>

Texas, 1879. (No ordinance or judicial power was recorded.)<sup>65</sup>

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52. North Carolina. Code, 1883. Sec. 2503.

53. Ibid., Sec. 2506.

54. North Dakota. Revised Codes, 1895. Sec. 628.

55. Ibid., Sec. 627.

56. Ohio. Revised Statutes, 1880.

57. Oklahoma. Statutes, 1890.

58. Oregon. Annotated Laws, 1887. Sec. 2582.

59. Ibid., Sec. 2572.

60. Pennsylvania. Digest, 1883.

61. Rhode Island. Statutes, 1882.

62. South Carolina. Revised Statutes, 1873. Title X Ch. XXXVI. Sec. 2.

63. South Dakota. Annotated Statutes, 1897. Sec. 2410.

64. Tennessee. Code, 1884.

65. Texas. Revised Statutes, 1879.

Utah, 1888. (No ordinance or judicial power was recorded.)<sup>66</sup>.

Vermont, 1880. (No ordinance or judicial power was recorded.)<sup>67</sup>.

Virginia, 1873. The state superintendent had power to determine the true intent and meaning of school laws, make regulations as to hearing of disputes, and his decision was final unless reversed by the courts.<sup>68</sup> The state board of education made by-laws and regulations for carrying school laws into effect.<sup>69</sup>.

Washington, 1881. The territorial board adopted uniform text books and prescribed rules for examinations.<sup>70</sup>.

West Virginia, 1891. (No ordinance or judicial power recorded.)<sup>71</sup>.

Wisconsin, 1878. The state superintendent prescribed rules and regulations for management of school district libraries, examined and determined appeals, and prescribed rules of practice in respect thereto.<sup>72</sup>.

Wyoming, 1878. The territorial superintendent made rules and regulations to carry school laws into effect.<sup>73</sup>.

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66. Utah. Compiled Laws, 1888.

67. Vermont. Revised Laws, 1880.

68. Virginia. Constitution. Art. VIII, Ch. 78.

69. Ibid., Ch. 78. Sec. 7 (1).

70. Washington. Code, 1881. Sed. 3165.

71. West Virginia. Code 1891.

72. Wisconsin. Revised Statutes, 1878. Sec. 166.

73. Wyoming. Revised Statutes, 1887. Sec. 3906.

The ordinance and judicial powers as recorded in the statutes of the recent period, from 1914 to 1933 are as follows:

Alabama, 1927. The School Code of 1927 contains statutes authorizing the state board of education to promulgate rules and regulations for proper construction of school buildings, physical examination of children,<sup>74</sup> for the grading and standardizing of public schools,<sup>75</sup> to govern the right method and disposition upon review of actions and orders by county or city boards of education, or county superintendents affecting educational interest,<sup>76</sup> prescribe minimum contents of courses of study for all elementary and high schools of the state<sup>77</sup> and such rules and regulations as will give full force and effect to all of its provisions.<sup>78</sup>

Arizona, 1928. The state board of education is authorized to make rules and regulations for its government and for the government of its executive officers, prescribe their duties and direct their work, determine the policy and work to be undertaken by the board and delegate to its executives the execution of all policies decided upon.<sup>79</sup> The state board is directed to prescribe and enforce a course of study in the common schools,<sup>80</sup> prescribe rules and regulations for the supervision and control of certification of teachers.<sup>81</sup>

Arkansas, 1931. The state board of education shall have general supervision of the public schools of the state: propose plans and specifications for the construction and equipment of school buildings, prepare rules and regulations for sanitary inspection of all buildings and for the examination of all pupils to detect contagious and infectious diseases; qualify and standardize public schools and prescribe requirements for accrediting and grading the common schools; take such other action as it may deem necessary to promote the physical welfare of the school children and promote the organization and increase the efficiency of the schools of the state.<sup>82</sup> The board

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74. Alabama, School Code, 1927, Article IV, Section 36.

75. Ibid., Sec. 38.

76. Ibid., Sec. 60.

77. Ibid., Sec. 38.

78. Ibid., Sec. 57.

79. Arizona. Revised Code, 1928. Sec. 989. Subsec. 2.

80. Ibid., Subsec. 5.

81. Ibid., Subsec. 7.

82. Arkansas, Laws, 1931. Act. 169, Sec. 14.

shall prescribe rules and regulations for certifying qualified teachers,<sup>83.</sup> and prescribe a uniform system of records.<sup>84.</sup>

California, 1929. The state board of education shall have power and it shall be its duty, to adopt rules and regulations for its own government, for the government of its appointees and employees, for the government of the day and evening elementary schools, the day and evening secondary schools, the technical and vocational schools of the state, for the government of the several teachers colleges of the state, and for the government of such other schools, as may receive in whole or in part financial support from the states;<sup>85.</sup> To issue subpoenas to compel the attendance of witnesses before the board or any member thereof, and whenever the testimony of any witness of any matter pending before it is material, the president must cause the attendance of the witnesses before the board, or a member, thereof, to testify concerning such matters.<sup>86.</sup> The state board shall at the request of the governing authorities of any state institution, establish courses of study for the inmates of such institution;<sup>87.</sup> establish standards for school buildings;<sup>88.</sup> provide examinations for credentials;<sup>89.</sup> establish more divisions in the department of education as in the judgment of the board are necessary for the proper transaction of the business of the department.<sup>90.</sup>

Colorado, 1921. The state board of agriculture, acting as the state board for vocational education shall make such rules and regulations as may be necessary for the administration of act, providing Federal Aid for Vocational Education.<sup>91.</sup> The state superintendent shall decide all points touching the construction of the school laws and his decision shall be final until set aside by a court of competent jurisdiction or by subsequent legislation.<sup>92.</sup>

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83. Arkansas. op.cit. Sec. 15.

84. Ibid., Sec. 18.

85. California. Codes and General Laws, Supplement, 1929, Sec. 2, 1382, Sec. 2, 1383.

86. Ibid., Sec. 2, 1385.

87. Ibid., Sec. 2, 1400.

88. Ibid., Sec. 5, 120, Sec. 5, 127, Sec. 5, 240.

89. Ibid., Sec. 2, 1462.

90. Ibid., Sec. 2, 1440.

91. Colorado. Compiled Laws, 1921. Sec. 8515, 3.

92. Ibid., Sec. 8268.

Connecticut, 1930. The state board of education shall have general supervision and control of the educational interests of the state; direct what books shall be used in the schools; shall seek to improve the methods and improve the efficiency of the teaching therein by holding state meetings of teachers and officers, and by such other means as they shall deem appropriate;<sup>93</sup> and make rules and regulations for granting certificates.<sup>94</sup>

Delaware, 1915. The state board of education shall make its own by-laws and all regulations deemed necessary to carry on the proper work and affairs of the board.<sup>95</sup> This board is vested with sole and exclusive jurisdiction to hear and determine finally all appeals from the several county school commissioners and all appeals of teachers, applicants for certificates, county superintendents and members of school committees and boards of education.<sup>96</sup>

Florida, 1927. The state board of education is directed and empowered to entertain and decide upon all questions and appeals referred to it by the state superintendent of public instruction on any matter of difference or dispute arising under the operation of law, and to prescribe the manner of making appeals and conducting arbitrations.<sup>97</sup> The governor of Florida, may of his own ruling reduce millage for textbooks if he finds the amount of 3/4 mill will be too much to buy textbooks.<sup>98</sup>

Georgia, 1914. The state board of education shall provide rules and regulations for supervision of all schools in the state. They shall provide the course of study for all common and high schools of the state receiving state aid.<sup>99</sup> The board shall be the final court of appeals to hear and decide all matters which have been appealed from the state superintendent of schools.<sup>100</sup> The county board of education shall constitute a tribunal for hearing and determining any matters of local controversy in reference to the construction or administration of the school law, with power to summon witnesses and take testimony if necessary; and when they have made a decision, said decision shall be binding upon the parties. Either of the parties shall have the right to appeal to the state school commissioners.<sup>101</sup>

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93. Connecticut. General Statutes, 1930. Sec. 829.

94. Ibid., Sec. 884.

95. Delaware. Revised Code, 1915. Sec. 2275.

96. Ibid., Sec. 2275.

97. Florida. Compiled General Laws, 1927. Sec. 755.

98. Ibid., Sec. 889.

99. Georgia. Park's Annotated Code, 1914. Sec. 1565.

100. Ibid., 1565C.

101. Ibid., 1485.

- Idaho, 1919. The state board of education shall constitute a final court of appeals in all educational controversies; shall perform legislative functions not inconsistent with law and shall delegate to its executive officers the execution of all policies decided upon.<sup>102.</sup>
- Illinois, 1929. The duty of the state superintendent shall be to make such rules and regulations as may be necessary to carry into efficient and uniform effect the provisions of this act, and of all laws for establishing and maintaining free schools in the state.<sup>103.</sup> He shall be the legal advisor of school officers, and when requested, to give his opinion in writing upon any question arising under school laws of the state;<sup>104.</sup> to hear and determine all controversies arising under the school laws of the state, coming to him by appeal from a county superintendent of schools.<sup>105.</sup>
- Indiana. The state board of education may make and adopt such rules, by-laws, and regulations as may be necessary for its own government, and for the complete carrying into effect the provisions of the next section of this act, and shall take cognizance of such questions as may arise in the practical administration of the school system not otherwise provided for, and duly consider, discuss, and determine the same.<sup>106.</sup> The state superintendent shall be charged with the administration of the system of public instruction and a general superintendency of the business relating to the common schools of the state, funds, and school reserves set apart for school support.<sup>107.</sup>
- Iowa, 1931. The state superintendent shall examine and determine all appeals taken to him, according to law, prescribe rules of practice therefore not inconsistent with law, and render written opinions upon questions submitted by school officials pertaining to their duties.<sup>108.</sup> The state board shall perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it and the finance committee.<sup>109.</sup>

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102. Idaho. Compiled Statutes, 1919. Sec. 800.

103. Illinois. Revised Statutes, 1929. Ch. 122, Sec. 3, Subsec. 7.

104. Ibid., Subsec. 8.

105. Ibid., Subsec. 9.

106. Indiana. Annotated Statutes, 1926. Sec. 6446.

107. Ibid., 6429.

108. Iowa. Code, 1931. Sec. 3832 (19).

109. Ibid., Sec. 3921. (10).



Kansas, 1923. The state board of education shall have exclusive and sole authority to define official standards of excellence in all matters relating to the administration, course of study, and instruction in rural schools, graded schools, and high schools, and to accredit those schools in which the specified standards are maintained.<sup>110</sup>. The board shall prescribe courses of study for the public schools of the state, and they shall revise the several courses of study when in their judgment such revision is desirable; they shall have authority to make rules and regulations relating to the observance of the prescribed course of study; and they shall issue certificates, under such regulations, not inconsistent with law, as the state board may determine.<sup>111</sup>. Aggrieved persons may appeal to the state superintendent in proceedings relating to joint districts and his decision on said appeal shall be final.<sup>112</sup>.

Kentucky, 1930. The state board of education shall prepare rules, by-laws, and regulations for the government of the common schools; prescribe regulations for the management of libraries; prescribe and publish graded course of study, the order to studies, and time allotted to each.<sup>113</sup>. The state board shall name which subjects the course of study shall embrace as prescribed by law.<sup>114</sup>. The state superintendent shall explain the true intent and meaning of all school laws and published regulations of the state board of education. He has power to examine under oath, administer the oath, and cause testimony to be reduced to writing.<sup>115</sup>. He shall prepare regulations governing the school equipment;<sup>116</sup>. and regulations governing vocational education.<sup>117</sup>. The superintendent shall prepare regulations for classifying schools, minimum requirements for grade of elementary and high schools.<sup>118</sup>.

Louisiana, 1921. The state board of education shall fix the qualifications and prescribe the duties of parish superintendent.<sup>119</sup>. The state board shall take entire charge of the examination

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110. Kansas. Revised Statutes, 1923. Sec. 72-103.

111. Ibid., Sec. 72-102.

112. Ibid., Sec. 72-305.

113. Kentucky. Statutes, 1930. Sec. 4382.

114. Ibid., Sec. 4385.

115. Ibid., Sec. 4388.

116. Ibid., Sec. 4398a-4.

117. Ibid., Sec. 4398a-5.

118. Ibid., Sec. 4385.

119. Louisiana. Constitution, 1921. Art. XII. Sec. 26 (page 79).

of teachers and shall determine the subjects which shall be used.<sup>120</sup> The state superintendent shall have general supervision of all school boards in the parishes, of all elementary, high and state schools, and shall see that the school system of the state is carried properly into effect.<sup>121</sup> The state board of education shall prepare rules, by-laws, and regulations for the government of the public schools of the state.<sup>122</sup> The state superintendent shall, whenever required, give advice, explanation, instructions, or information to the school board members and superintendents and to citizens relative to public school law, and all other questions calculated to promote the cause of education.<sup>123</sup>

Maine, 1930. The commissioner of education shall make rules and regulations for carrying out the registration of teachers. He may prescribe certificate regulations;<sup>124</sup> prescribe studies to be taught;<sup>125</sup> make all necessary rules and regulations.<sup>126</sup>

Maryland, 1924. The state board of education shall prescribe with and on advice of the state superintendent, rules and regulations for construction of buildings,<sup>127</sup> grading and standardizing schools<sup>128</sup>, courses of study for the public elementary schools, high schools, and normal schools.

Massachusetts, 1932. The commissioner shall be the executive and administrative head of the department. He shall have charge of the administration of all laws, rules and regulations which it is the duty of the department to administer and enforce.<sup>129</sup>

Michigan, 1928. It shall be the duty of the superintendent of public instruction to do all things necessary to promote the welfare of the public schools and public educational institutions and provide proper educational facilities for the youth of the state.<sup>130</sup> The superintendent of public instruction may remove from office any member of any school board, except school districts located wholly or partially

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120. Louisiana. Compiled Laws, 1920. Act 120. Sec. 37.

121. Ibid., Sec. 26.

122. Ibid., Sec. 2.

123. Ibid., Sec. 25.

124. Maine. Revised Statutes, 1930. Ch. 19, Sec. 155.

125. Ibid., Sec. 149.

126. Ibid., Sec. 161.

127. Maryland. Annotated Code, 1924. Art. 77. Sec. 13.

128. Ibid., Sec. 14.

129. Massachusetts. General Laws, 1921.

130. Michigan. Compiled Laws, 1928. Sec. 7331.

within a city, who shall have illegally used the public moneys entrusted to his charge or who shall persistently and without sufficient cause refuse or neglect to discharge any duties of his office. The party so removed may within thirty days after said removal institute proceedings before a court of competent jurisdiction for the setting aside of such order for removal from office.<sup>131.</sup>

Minnesota, 1927. The state board of education is authorized to adopt all necessary rules for the conduct of its affairs; the said board has authority also, to define the duties of appointees.<sup>132.</sup>

Mississippi, 1930. The state superintendent shall have the power and it shall be his duty to supervise in a general way the public free schools of the state and to prescribe such rules and regulations for the efficient organization and conducting the same, as he may deem necessary.<sup>133.</sup> The state board of education shall decide all appeals from the decision of the county superintendents, or from the decision of the state superintendent; but all matters relating to appeals shall be presented in writing, and the decision of the board shall be final.<sup>134.</sup>

Missouri, 1931. The state superintendent shall cause copies of the law relating to schools, with instructions for carrying into execution of such laws, to be printed in a separate volume and distributed to each county in the state for the use of the school officers therein.<sup>135.</sup> When such instructions are practical, they have great weight with the courts in determining the true meaning of the law.<sup>136.</sup>

Montana, 1921. The state board of education shall have power and it shall be its duty to adopt rules and regulations for its own government, and rules and regulations, proper and necessary, for the execution of the powers and duties conferred upon it by law.<sup>137.</sup>

Nebraska, 1929. The state superintendent shall decide disputed points in school law and all such decisions shall be held to have the force of law until reversed by the courts.<sup>138.</sup> He shall prescribe regulations for all proceedings under the general school laws of the state.<sup>139.</sup>

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131. Michigan. op.cit. Sec. 7333.

132. Minnesota. Statutes, 1927. Sec. 2960.

133. Mississippi. Code, 1930. Sec. 6557.

134. Ibid., Sec. 6549.

135. Missouri. Statutes Annotated, 1931. Sec. 9444..

136. Missouri. State ex. rel. v. Job. 205 Mo. I.

137. Montana. Revised Codes, 1921. Sec. 836.

138. Nebraska. Compiled Statutes, 1929. Sec. 79-1604.

139. Ibid., Sec. 79-1605.

Nevada, 1929. The powers and duties of the state board shall be as follows: to prescribe and cause to be enforced the courses of study for the public schools; to revoke or suspend for immoral or unprofessional conduct, or persistent defiance of and refusal to obey the laws of the state, or the rules and regulations of the state board, or of the state superintendent defining and governing the duties of teachers, any state diploma, or any state certificate.<sup>140</sup>. The superintendent of public instruction shall have power and it shall be his duty to prescribe suitable rules and regulations for making all reports and conducting all necessary proceedings under this act.<sup>141</sup>.

New Hampshire, 1926. The state board of education may make all rules and regulations necessary for the management of its own business and for the conduct of its officers. It shall be the duty of school boards and employees of school districts to comply with the rules and regulations of the board.<sup>142</sup>. Any person aggrieved by an order or finding of the commissioner of education may appeal therefrom to the state board, which shall investigate the matter in any way it sees fit and its order shall be final.<sup>143</sup>.

New Jersey, 1930. The commissioner of education shall, with the advice and consent of the state board of education, designate one of such assistants (there are five) to hear all controversies and disputes which may arise under the school laws, or the rules and regulations of the state board of education, or the commissioner of education, subject however to a right of appeal to the state board.<sup>144</sup>. The decisions of school tribunals have the conclusive quality of a "judgment pronounced in a legally created court of limited jurisdiction."<sup>145</sup>.

New Mexico, 1929. The state board of education shall determine educational policies of the state, and shall enact and publish by-laws for the administration of the public school system, which when enacted and published shall have the force of law.<sup>146</sup>. The state board of education shall explain the true intent and meaning of the law, and shall decide without expense to the parties concerned, all controversies and disputes that arise under it, and their decision shall be final.<sup>147</sup>.

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140. Nevada. Compiled Laws. 1929. Sec. 5653.

141. Ibid., Sec. 5655.

142. New Hampshire. Public Laws, 1926. Ch. 116, Sec. 5.

143. Ibid., Ch. 116. Sec. 12.

144. New Jersey. Compiled Statutes. Supplement 1930. Sec. 185-21c.

145. New Jersey. 57 N.J.L. 628; 31 Atl. 168.

146. New Mexico. Statutes Annotated, 1929. Sec. 120-101.

147. Ibid., Sec. 120-101.

New York, 1930. Subject and in conformity to the constitution and laws of the state, the regents shall exercise legislative functions concerning the educational system of the state, determine its educational policies, and except as to the judicial functions of the commissioner of education, establish rules for carrying into effect the laws and policies of the state, relating to education, and the functions, powers, duties, and trusts conferred or charged upon the university and the educational department.<sup>148</sup> The commissioner of education shall have general supervision over all schools and institutions which are subject to the provisions of this act, or any of the statutes relating to education, and shall advise and guide the school officers of all the districts and cities of the state in relation to their duties and the general management of the schools under their control.<sup>149</sup> Whenever it shall be proved that any trustee, member of a school board, clerk, collector, treasurer, school commissioner, superintendent of schools, or any other school officer has been guilty of any willful violation or neglect of duty under this chapter, or willfully disobeying any decision, order, or regulation of the regents or of the commissioner of education, said commissioner may, by an order under his hand and seal remove such school officer from his office. Said commissioner may also withhold from any district or city its share of the public money of the state for willfully disobeying any provision of law or any decision, order, or regulation as aforesaid.<sup>150</sup>

North Carolina, 1919. The state board of education is created a corporation with the right to sue and be sued, to make contracts and by-laws; and is vested with all other powers conferred on corporations, so far as such powers are necessary or convenient to the attainment of the objects of the board or to the performance of its duties.<sup>151</sup> The state superintendent is empowered and it shall be his duty: to direct the operations of the public schools and enforce the laws and regulations thereto. The county board of education and all other school officers in the several counties shall obey the instructions of the state superintendent and accept his construction of the school laws.<sup>152</sup>

North Dakota, 1913. The state board of education is authorized to establish such rules as may be found necessary to secure uniform and best results among the schools receiving state aid.

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148. New York. Consolidated Laws, 1930. Ch. 15, Sec. 46.

149. Ibid., Sec. 94.

150. Ibid., Sec. 95.

151. North Carolina. Consolidated Statutes, 1919. Sec. 5384.

152. Ibid., Sec. 5392.

The rules and regulations for classifying state, rural, graded and consolidated schools as provided by law, shall be made by the state board of education.<sup>153</sup> The state superintendent shall, when requested, give written answers to all questions concerning the school law. He shall decide all appeals from the decision of the county superintendents. He shall prescribe and cause to be enforced, rules of practice and regulations pertaining to the hearing and determination of appeals and necessary for carrying into effect the school laws of the state.<sup>154</sup>

Ohio, 1929. The superintendent of public instruction shall prescribe suitable forms and regulations for the reports and other proceedings required by the school laws, with such instructions for organization and government of schools as he deems necessary and transmit them to the local school officers, who shall be governed thereby in the performance of their duties.<sup>155</sup>

Oklahoma, 1931. The state board of education shall devise rules and regulations for the apportionment of the special common school equalization fund and shall have power and is authorized through its officers to approve sworn claims in such amount as that for which a district may qualify under the provision of this act in the judgment of the board.<sup>156</sup> The state board of vocational education (state board of education) is hereby authorized, designated, and required to co-operate with the federal board for vocational education and to do all things necessary to entitle the state to receive the benefits thereof.<sup>157</sup> The state board of education has all authority in the matter of examination of all teachers and the county and city examining boards are hereby abolished.<sup>158</sup> The textbook commission (state board) is authorized to select the texts for grades one to twelve (including maps, charts).<sup>159</sup>

Oregon, 1930. The state board shall have power to prescribe a series of rules and regulations for the general government of the public schools and for the maintenance of discipline therein.<sup>160</sup> The state superintendent of public instruction shall decide without cost to the parties all questions of doubt that may

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153. North Dakota. Compiled Laws, 1913. Sec. 1427.

154. Ibid., Sec. 1110.

155. Ohio. Annotated Code, 1929. Sec. 357.

156. Oklahoma. Statutes, 1931. Sec. 7105.

157. Ibid., Sec. 7192.

158. Ibid., Sec. 7007.

159. Ibid., Sec. 6695.

160. Oregon. Code Annotated, 1930. Ch. 35. Sec. 203.

be submitted to him, and all disputes that may be appealed to him from the county superintendents, concerning the proper administration of the school laws and of the rules and regulations of the state board of education, and concerning the ministerial duties of the schools officers and teachers; but he may in his discretion submit any such questions or disputes to the state board of education, who shall then decide the same. The state board shall adopt reasonable rules of procedure to govern the submission of such questions and the trials and appeals for this act. The decision of the state board or the superintendent as herein provided for, shall guide school officers and teachers in the discharge of their duties in respect to the matters so decided; but this section shall not be construed to deprive any person of his ordinary remedy in a court of competent jurisdiction.<sup>161.</sup>

Pennsylvania, 1929. The department of public schools shall have the power and its duty shall be: to administer all the laws of this commonwealth with regard to the establishment maintenance, and conduct of the public schools; to issue all commissions to superintendents and assistant superintendents to prescribe minimum courses of study for the public schools.<sup>162.</sup>

Rhode Island, 1923. The state board of education shall prescribe and cause to be enforced all rules and regulations necessary for carrying into effect the laws in relation to schools. The said board may, for violation or neglect of law or for violation or neglect of rules in pursuance of law by any town or town officer, order the general treasurer to withhold the payment of any portion of the public money that has been or may be apportioned to any such town. The board of education shall report to the general assembly annually all infractions of school law which shall be brought to its attention, with a record of such action as the board shall have taken in each instance.<sup>163.</sup> It is provided that when a town cannot support a school, (under certain conditions) it may request the state board to take the town over, if the board feels this is warranted, and thus take charge of the school.<sup>164.</sup>

South Carolina, 1932. The state board of education has the power: to adopt rules and regulations for the government of the free schools, to prescribe and enforce examination rules, to prescribe standards, courses of study, and textbooks.<sup>165.</sup> The

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161. Oregon. op.cit. Ch. 35. Sec. 104 (8).

162. Pennsylvania. Laws, 1929. Act. No. 175. p. 245-246.

163. Rhode Island. General Laws, 1923. Sec. 917.

164. Ibid., Sec. 955.

165. South Carolina. Code of Laws, 1932. Sec. 5282.

state board shall have power to review on appeal all decisions of county boards of education, and the decision of the state board shall be final upon the matter at issue.<sup>166.</sup>

South Dakota, 1929. The board of regents has power to govern and regulate each institution under its control in such a manner as it shall deem best calculated to promote the purpose for which the same is maintained.<sup>167.</sup> The state board of education has authority to select such officers as the superintendent may deem necessary to administer the federal act for vocational education.<sup>168.</sup> The state superintendent shall prepare the questions for examination of teachers.<sup>169.</sup>

Tennessee, 1932. The commissioner, on request of the county board of education, shall enforce all rules and regulations of said commissioner.<sup>170.</sup> The textbook commission selects and adopts a uniform system or series of texts for elementary and high schools. They may select none which contain anything of a sectarian or partisan character.<sup>171.</sup> The county board may consolidate schools.<sup>172.</sup>

Texas, 1925. The state superintendent shall be empowered to issue instructions and regulations binding for observance on all officers and teachers in all cases wherein the provisions of school law may require interpretation, and also cases that may arise in which the law has no provision, in order that no hardships and no delays or inconvenience (are brought about) in the management of school affairs.<sup>173.</sup> He shall hear and determine all appeals from the rulings and decisions of subordinate school officers. Appeal shall always be from his rulings to the state board.<sup>174.</sup> All appeals from the county superintendent may elect to appeal to any court having jurisdiction, or to the state superintendent of instruction.<sup>175.</sup>

Utah, 1917. The state superintendent shall be charged with the administration of the system of public education, and shall have full power to investigate all matters pertaining to the public

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166. South Carolina. op.cit. Sec. 5288.

167. South Dakota. Compiled Laws, 1929. Sec. 5573.

168. Ibid., Sec. 9409-5

169. Ibid., Sec. 7386.

170. Tennessee. Code, 1932. Sec. 2314 (16).

171. Ibid., Sec. 2453.

172. Ibid., Sec. 2326-1.

173. Texas. Revised Civil Statutes, 1925. Sec. 2657.

174. Ibid., Sec. 2625.

175. Texas, Revised Statutes, Cumulative, 1932. Sec. 2686.



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schools. He shall when requested by superintendents or other school officers, give them written answers to all questions concerning the school law. His decision shall be held to be correct and final until set aside by a court of competent jurisdiction or by subsequent legislation.<sup>177.</sup>

Vermont, 1917. The state board of education shall have supervision and management of the public educational system and through the commissioner of education shall make and promulgate regulations necessary for the execution of his powers and duties and of the powers and duties of all officers under its supervision and control.<sup>178.</sup>

Virginia, 1930. The state board of education may make all needful rules and regulations not inconsistent with law for the management and conduct of the schools. When published and distributed they shall have the force and effect of law until revised, amended, or repealed by the general assembly.<sup>179.</sup>

Washington, 1922. The state superintendent has the power and duty to decide all points of law submitted by a county superintendent or on appeal and his decision shall be final unless set aside by a court of competent jurisdiction.<sup>180.</sup> The state board shall have power and it shall be the duty to prepare an outline course or courses of study for the common schools and to prescribe such rules for the general government of the common schools as shall secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interests of the common schools.<sup>181.</sup>

West Virginia, 1932. Subject to and in conformity with the constitution and laws of this state the state board of education shall determine the educational policies of this state and shall make all rules and regulations for carrying into effect the laws and policies of the state relating to education, and such other matters pertaining to the public schools in the state as may seem to the board to be necessary and expedient.<sup>182.</sup> The state superintendent of schools shall cause to be instituted such proceedings or processes as may be necessarily proper to enforce any rule or direction of the state board of education

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176. Utah. Compiled Laws, 1917. Sec. 4518.

177. Ibid., Sec. 4520.

178. Vermont. General Laws, 1917. Sec. 1172.

179. Virginia. Code, 1930. Sec. 609.

180. Washington. Compiled Statutes, 1922. Sec. 4523.

181. Ibid., Sec. 4529.

182. West Virginia. Code, 1932. Sec. 1730.

made in conformity with its powers and duties.<sup>183</sup>. At the request in writing of any citizen, teacher, school official, county or state officer, the state superintendent of schools shall give his interpretation of the meaning of any part of the school law or of the rules of the board of education.<sup>184</sup>.

Wisconsin, 1931. The state superintendent shall examine and determine all appeals which by law may be made to him, and prescribe rules of practise in respect thereto not inconsistent with law.<sup>185</sup>. He shall prepare and publish from time to time courses of study for the common and high schools.<sup>186</sup>. The state superintendent may order a school board or other school officer to repair or improve or remodel a school building, judged unfit for school purposes.<sup>187</sup>. He shall grant a hearing, and affirm, amend, or vacate his original order.<sup>188</sup>.

Wyoming, 1931. The state superintendent shall make all further rules and regulations that may be necessary to carry the law into full effect, according to its spirit and intent, which shall have the same force and effect as though contained herein.<sup>189</sup>. He shall explain the true intent and meaning of the school laws and of rules and regulations of the state board of education and shall decide without expense to the parties concerned, all controversies and disputes involving the administration of the public schools and his decision shall hold until revoked by a court of competent jurisdiction. He shall have power to enforce all the provisions of this article and of the rules and regulations of the state board of education.<sup>190</sup>. The state superintendent with the state board shall prescribe policies of educational administration throughout the state and shall recommend rules and regulations for the administration of the public school system. For the purpose of enforcing the school laws, the board may institute legal proceedings in the name of the state of Wyoming.<sup>191</sup>. The state board shall prescribe standards regulating the general course of study.<sup>192</sup>.

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183. West Virginia. op.cit. Sec. 1774.

184. Ibid., Sec. 1746.

185. Wisconsin. Statutes, 1931. Sec. 14, 57 (7)

186. Ibid., Sec. 1557 (10)

187. Ibid., Sec. 39, 33 (3).

188. Ibid., Sec. 39, 33 (5)

189. Wyoming. Revised Statutes, 1931. Sec. 109-701.

190. Ibid., Sec. 99-106.

191. Ibid., Sec. 99-111.

192. Ibid., Sec. 99-113.

### Summary.

Federal educational officers who have ordinance making power affecting education in the states are connected with the departments of Interior, Agriculture, and War. The ordinance power is authorized by the various acts granting federal aid, the Radio Act, and the National Defense Act.

Ultimate judicial power resides in the United States Supreme Court which in recent years has reviewed educational controversies involving the constitutionality of state laws on educational matters.

The phase of administrative law called ordinance power is placed in the state board of education in some states, and in the state superintendent in others.

The "rules and regulations" authority is given by constitution to the state board of Virginia. It is granted in the recent period, 1914-1933, to the state board of Alabama, Arizona, California, Georgia, Montana, New Hampshire, Oklahoma, Oregon, South Carolina, Virginia, and Wyoming. The phrase is changed to "rules, by-laws, and regulations" in Indiana and Kentucky; to "by-laws which shall have the force of law" in New Mexico; to "force and effect of law" in Virginia; to "all rules necessary" in Minnesota, Iowa, and North Dakota; to "prescribe and cause to be enforced" in Rhode Island; to "prescribe rules" in Washington; to "as they deem appropriate" in Connecticut; to "make by-laws and regulations" in Delaware; to "determine policies" in West Virginia.

Idaho's state board of education is authorized to perform

"legislative functions"; North Carolina's board is a "corporation which may sue or be sued, make contracts and by-laws." Kansas' board is given "exclusive and sole authority" to define standards and accredit schools of the state.

The state board is the "final court of appeals" for cases of school law in Georgia and Idaho; the "sole and exclusive jurisdiction to hear and determine finally" in Delaware; shall "decide all questions of appeal from the state superintendent" in Florida and Texas; their "decision shall be final" in Mississippi, New Hampshire, New Mexico, and South Carolina. California's state board has authority to "issue subpoenas and compel attendance of witnesses"; Wyoming's board may "institute legal proceedings in the name of Wyoming."

Power to make "rules and regulations as may be necessary" is given by law to the state superintendent, or to the commissioner of education in Illinois, Maine, Mississippi, Nevada, Ohio, and Wisconsin; "to do all things necessary" in Michigan; "full power to investigate all matters pertaining" in Utah; to make "rules and regulations with the same force and effect as though contained herein" (statutes), in Wyoming.

The state superintendent reviews school law controversies and his "decision is final until set aside by a competent court of jurisdiction" in Colorado, Nebraska, Utah, Washington. The commissioner or state superintendent is authorized to "hear and determine all appeals" from subordinates in school law in Illinois, Iowa, North Dakota, Texas, and Wisconsin. He must "interpret school law" in West

Virginia, Texas, Kentucky. In New Jersey, the commissioner designates one assistant to hear appeals; Wyoming's superintendent is requested to "enforce the school law." In Tennessee, the commissioner will "enforce" if requested to by the county board of education. Oregon's law whereby the state superintendent "decides all questions of doubt" is not to be "construed to deprive parties of ordinary remedy through the courts." The commissioner of Massachusetts is charged to enforce the school laws. In Kansas, the decision of the state superintendent on questions or on appeal from joint districts shall "be final". In Georgia, the county board constitutes a tribunal to try cases of school law. North Carolina's superintendent has the duty of enforcing school law. All subordinates must "accept his construction of school law." In New York, the commissioner has power to withhold state money from schools which do not obey school law, rules and regulations. In New Jersey the decisions of school tribunals have "the conclusive quality of a judgment pronounced in a legally created court of limited jurisdiction."

In the statutes of the earlier period, 1873-1891, there was no ordinance or judiciary power recorded for Alabama, Delaware, Georgia, Indiana, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, New Mexico, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, nor West Virginia. Those which were expressed in territorial laws had little force.

The states which expressed definite ordinance power for the state board of education were California, Kentucky, Michigan, New

Jersey, New York, North Carolina, Oregon, South Carolina, and Virginia. The power was usually expressed as "the making of rules and regulations for the government of the public schools."

Judicial power for the state board was expressed by Florida, Maryland, Michigan, Mississippi, and New Jersey, as power to decide appeals from decisions on school laws.

The ordinance powers of state superintendents were recorded for Illinois, Michigan, North Dakota, Oregon, South Dakota, and Wisconsin. The power was often limited to school libraries, normal institutes, calling meetings, or preparing questions for examinations.

Judicial powers were granted the state superintendent in Iowa, Louisiana, Nebraska, Virginia, and Wisconsin. They were to determine the meaning of school laws, and decide appeals from cases of school law under local school officers.

From the data of the two periods of school law recorded in this chapter, the increase of ordinance and judicial powers of federal and state officials is evident.

## CHAPTER V

### MECHANISMS OF CONTROL IN EDUCATION

In the field of educational control the administrative authorities must necessarily use various methods and forms for contact with local schools and with subordinates in administrative positions. Some of these methods are designed by special legislation, some are issued as ordinances, and some are used by administrators as influential devices. A school boy may learn to sing the Star Spangled Banner because of a law in one state, an ordinance in another, a standard requirement in a third. Again, this feature of the boy's curriculum may be in the local teacher's program only; it may be embodied in a state law; or, if the school is receiving federal aid, he may be obeying a federally approved ordinance when he sings the song.

The number of mechanisms which administrative agencies find available for certain degrees of control are continually increasing.

2. Wallace discusses twenty-one in the field of education. Among them are listed appointment, approval, certification, ordinance-making, and review -- all of which have been taken up in the earlier chapters of this study. Five more major mechanisms will be discussed in the present chapter.

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1. Maryland. Code of 1924. Art. 77. Sec. 82.

2. Wallace, Schuyler C. State Administrative Supervision Over Cities in the United States. 1928. p. 97.

### Official Reports.

"Reports involve both negative and positive influence.

The negative is significant because neglect of duty on the part of the local officer is less likely if reports are required. From the positive point of view, the requirement of reports is important in that local pride is stimulated, if when the reports are published the community ranks well up in the list. If the reverse be true then the local administrators are <sup>t</sup>stimulated to greater action." <sup>3.</sup>

Roscoe Pound stated in a recent number of the Oregon Law Review:

"We turn to statistics to tell us, or at least to help tell us, what tasks are before us, how we are going to achieve them, and how far we are doing, or failing to do, what we have set out to do." <sup>4.</sup>

In the early history of education, reports were required where the disbursement of funds depended upon them, but they were considered mainly as beneficial for information. A. N. Raub, writing a text on school management for teachers in 1882, urged the teacher to keep a record of the admissions, attendance, deportment, and class recitation of pupils. He sets forth the advantages of reports and states "blank forms in many cases are supplied by the state, and others may be had at but small expense from the publishing houses." <sup>5.</sup>

The laws of the states for the period in which Raub writes disclose that the preparation of blank forms for reports was one of the principal duties of state educational officials in Alabama,

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3. Crawford, Finla Goff. State Government. 1931. p. 451.

4. What Use Can Be Made of Statistics? Oregon Law Review. 1933. Vol. XII. No. 2.

5. Raub, A. N. School Management. p. 59.



Arkansas, California, Colorado, Georgia, Idaho, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. The states which at this time made reports a lawful requirement were Alabama, Georgia, Iowa, Louisiana, Mississippi, Missouri, and Ohio. The state officials of Wisconsin and West Virginia were required to collate or abstract the reports which were sent in to the state office by  
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county superintendents.

The laws for the recent period from 1913 to 1932 indicate the importance attached to reports by law-making bodies, as shown by the fact that every state requires many types of records to be made and

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6. Ala., Code, 1886. Sec. 950, Subsec. 1; Ark., Stat. 1884. Sec. 6150; Cal., Codes and Stat., 1885. Sec. 1532 (6); Colo., General Stat., 1883. Sec. 3004; Ga., Code, 1882. Sec. 1250; Ida., Rev. Stat., 1887. Sec. 631; La., Laws, 1888. Act. 81, p. 91, Sec. 4; Md., Rev. Code, 1878. Art. 27. Sec. 13; Mass., Public Stat., 1882. Chap. 41. Title X, Sec. 3; Minn., Comp. Laws, 1888. Sec. 1862; Miss., Code 1880, Sec. 317; Mo., Rev. Stat., 1889. Sec. 8079; Neb., Comp. Stat., 1881. Chap. 79. Subsec. VIII. Sec. 5; N. H., Gen. Laws, 1878. Chap. 92. Sec. 2; N. J., Rev. Laws Supple., 1877. p. 1072, Sec. 12; N. Y., Stat. 1881. Chap. 15. Title 2. Sec. 19, Sec. 15; N. D., Rev. Code, 1875. Chap. 9. Art. I. Sec. 625; N. C., Code, 1883. Sec. 2540; Ohio, Rev. Stat., 1880. Sec. 357, Sec. 359; Okla., Stat. 1890. Chap. 79. Sec. 390; Pa., Purdon's Dig., 1883. Art. IV, Sec. 164, IV; S. C., Rev. Stat. 1873. Title X, Chap. 35, Sec. 6; Tenn., Code, 1884. Sec. 1180 (4); Tex., Rev. Stat., 1879. Chap. 3. Art. 3716; Vt., Rev. Stat. 1880. Chap. 27, Sec. 453; West Va., Code, 1891. Chap. 45. Sec. 67; Wis., Rev. Stat. 1878. Chap. 2. Sec. 166 (8).

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copies sent to state offices. Trusler, in a recent text on school law mentions cases where a statute, with a penalty for failure to make reports, has been tested out in the courts and found to be ef-

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fective. The keeping of records is no longer a matter of discretion on the part of local authorities, but is now mandatory law.

The constitutions of the states do not mention the matter of local records but a number of them are specific regarding the

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7. Ala., School Code, 1927. Art. IV, Sec. 43; Ariz., Code, 1928, Sec. 989, Sec. 990; Ark., Laws, 1931. Act 169. p. 476. Sec. 7; Cal., School Code, 1929. Sec. 2, 1419; Colo., Comp. Laws Supple., 1932. Sec. 8269; Conn., Gen. Stat., 1930. Sec. 996; Fla., Comp. Gen. Laws, 1927. Sec. 778; Ga., Annot. Code Supple., 1922. Sec. 1436 (v); Ida., Stat., 1919. Sec. 890, Sec. 898; Ill., Rev. Stat., 1929. Ch. 122, Sec. 7; Ind., Stat., 1926. Sec. 6431; Iowa, Code, 1931. Sec. 3832; Kans., Rev. Stat., 1923. Sec. 72-204; Ky., Stat., 1930. Sec. 4387, Sec. 4389; La., Laws, 1916. Act. 120. Sec. 4. p. 256; Me., Rev. Stat., 1930. Sec. 149, Sec. 151; Md., Code, 1924. Art. 79. Sec. 19; Mass., Gen. Laws, 1932. Ch. 72, Sec. 1-8; Mich., Comp. Laws, 1929. Sec. 7706m; Minn., Stat., 1927. Sec. 2905; Miss., Code, 1930. Sec. 6636; Mo., Rev. Stat., 1929. Sec. 9460; Mont., Code, 1921. Sec. 939, Sec. 973; Neb., Stat., 1929. Sec. 79-1905; Nev., Comp. Laws, 1929. Sec. 5655 (5); N. H., Pub. Laws, 1926. Ch. 117. Sec. 24; N. J., Comp. Stat. Supple., 1930; N. M., Annot. Stat., 1929. Sec. 120-4; N. Y., Comp. Laws, 1930. Sec. 99 (1), Sec. 94 (2); N. D., Code Supple., 1925. Sec. 1135; N. C., Cons. Stat., 1924. Sec. 5493, Sec. 5502; Ohio, Code, 1930. Sec. 7787; Okla., Stat., 1931. Sec. 6743; Ore., Code, 1930. Sec. 35-410; Pa., Stat. Supple., 1928. Sec. 4892; R. I., Gen. Laws, 1923. Sec. 917, 981; S. C., Code, 1932. Sec. 5274, Sec. 5277; S. D., Comp. Laws, 1929. Sec. 7563, Sec. 7424; Tenn., Code, 1932. Sec. 2314; Tex., Rev. Stat., 1932. Art. 2661; Utah, Code, 1919. Sec. 4518; Vt., Laws, 1923. Act 32. Sec. 17b; Va., Code, 1930. Sec. 631, Sec. 644q; Wash., Rev. Stat., 1931. Sec. 4523, Sec. 4770; W. Va., Code, 1932. Sec. 1740; Wis., Stat. 1931. Sec. 39.03, Sec. 39.11; Wyp., Rev. Stat., 1931. Sec. 99-107.
8. Trusler, Harry Raymond. Essentials of School Law. p. 223. School Dist. v. Tuttle, 26 N. H. 470; Jay v. School Dist, 24 Mont. 219.

report of the chief officer in education to the legislature.

Others place in the governor or the legislature the authority to require information from the state superintendent, information which he would be unable to supply without the local reports which are required to be sent to his office.<sup>9.</sup>

As to the right of the state to require reports and to cause the forfeiture of salaries of officials who neglect this duty, the following quotation from Ruling Case Law shows that even the local board of education may not excuse a teacher, principal, or a superintendent from this duty.

Essentially and intrinsically, the schools, in which are educated and trained the children who are to become the rulers of the commonwealth, are matters of state and not of local jurisdiction. In such matters the state is a unit and the legislature the source of power.....It is for the lawmaking power to determine whether the authority shall be exercised by a state board of education, or distributed to county, township, or city organization throughout the state. If the power is given to the local community, it may be withdrawn at any time, and a state statute regulating the conduct of the public schools by the respective municipalities, is clearly constitutional.<sup>10.</sup>

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9. New Mexico. Constitution, 1911. Article V. Sec. 9.  
Idaho. Constitution, 1890. Article IV. Sec. 17.  
Illinois. Constitution, 1870. Article V. Sec. 21.  
Kansas. Constitution, 1859. Article I. Sec. 16.  
Nebraska. Constitution, 1920. Article V. Sec. 22.  
West Virginia. Constitution, 1872. Article VII. Sec. 18.  
North Carolina. Constitution, 1872. Article III. Sec. 7.  
Nebraska. Constitution, 1920. Article V. Sec. 22.  
Alabama. Constitution, 1901. Article V., Sec. 121.  
Idaho. Constitution, 1890. Article IV. Sec. 8.  
Illinois. Constitution, 1870. Article V. Sec. 21.  
Missouri. Constitution, 1875. Article VII. Sec. 22.  
West Virginia. Constitution, 1872. Article VII. Sec. 18.  
North Carolina. Constitution, 1872. Article III. Sec. 7.  
Oklahoma. Constitution, 1907. Article VI. Sec. 33.
10. Ruling Case Law. Vol. 19, R. C. L. p. 765, Sec. 71.

Decisions in cases of controversy on the matter of reports confirm  
11.  
this theory.

The Office of Education at Washington, D. C. has no federal authority for requiring reports from state departments of education. Blank forms are supplied with requests for reports. That this federal service has come to be used and appreciated is shown by the fact that the omissions have become less and less as the collated reports from Washington are published. In a 1932 report for the Biennial Survey, the state departments and state universities responded 100%. Less than 60% of certain types of high schools responded. These federal reports are for information, advice, or investigation.

The first reports required by the federal government in educational matters were in the First Morrill Act of 1862 in connection  
12.  
with the land grants for colleges. The governors were required to report annually concerning the funds received from land sales. Again in 1887, the Hatch Act required reports from the experiment stations. These reports were made to the governor of the state with a duplicate  
13.  
copy which was to be sent to the Secretary of Agriculture. The power to withhold funds as a means of enforcing requirements for reports and for carrying out other provisions was initiated in the second  
14.  
Morrill Act of 1890. Similar power was incorporated in a supple-  
15.  
mentary act for aid to agriculture in 1906. The vocational education

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11. New Hampshire. School District v. Tuttle, 26 N. H. 470.  
Maryland. Board of School Commissioners v. Adams, 43 Md. 349.  
Maine. Brown v. Chesterfield, 63 Me. 241.

12. U. S. 12 Stat. 504, 505.

13. U. S. 24 Stat. 441.

14. U. S. 26 Stat. 419.

15. U. S. 34 Stat. 64.

act of 1917 requires reports, with the device of withholding allot-  
ments as a means of enforcing compliance.<sup>16.</sup> The annual publications  
of the federal government, classed as educational by the National  
Advisory Committee, and including all types of information and rec-  
ords, reached the large figure of 60,274,397 publications in 1929.<sup>17.</sup>  
This figure did not include publications by Congress, but those of  
49 other agencies.

It is impossible to state the extent of control which re-  
ports may bring about, since so much depends upon the administrator  
who is making use of this mechanism. Their value is not doubted. In  
a very recent national report on education by Charles H. Judd publish-  
ed in the volumes entitled Recent Social Trends, it is interesting to  
note how many times his footnotes contain the statement, Data supplied  
by the Office of Education, and how many times specific reports  
published by the federal office are cited.<sup>18.</sup>

#### Compulsory Attendance.

Education is the one field of government service in which  
compulsory attendance is a control mechanism. It is a matter of  
history how permission to attend the early free schools has evolved  
into a matter of obligation and how the state has "superseded the  
home in estimating the importance to the child of the education pro-  
vided."<sup>19.</sup>

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16. U. S. 39 Stat. 935, 936.

17. Report of the National Advisory Committee on Education. op.cit.

18. Recent Social Trends. Report of the President's Research  
Committee on Social Trends. 1933. Ch. VII.

19. Cubberley, E. P. Independence of School Government a Necessity.  
School and Society. 1933. Vol. 37. p. 266.

The data of the period 1873 to 1891 discloses that 16<sup>20.</sup> states had some type of compulsory education, and that 32 states and territories had no compulsory attendance laws. Keesecker, in a study of laws relating to compulsory attendance finds that Wisconsin, Rhode Island, Illinois, Minnesota, Nebraska, Idaho, Colorado,<sup>21.</sup> Oregon, and Utah initiated this law before 1890. It is interesting to note the geographical location of the first five states to pass such a law: Massachusetts, 1852; Vermont, 1867; New Hampshire, 1871; Michigan, 1871; and Washington, 1871.

In the recent period of data all of the states compel attendance during certain specified years, and devote from one to 22 sections of law in stating the provisions and various features of the

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20. Cal., Codes and Stat., 1885. Sec. 1688; Conn. Gen. Stat., 1887. Sec. 2102; Me., Rev. Stat., 1884. Ch. II. Sec. 24-27; Mass., Pub. Stat., 1882. Ch. 47. Sec. I; Mich., Annot. Stat., 1882. Sec. 5070; Mont., Comp. Laws, 1888. Sec. 1921-1924; Nev., Gen. Stat., 1885. Sec. 1369-1374; N. H., Gen. Laws, 1878. Ch. 91. Sec. 6; N. J., Rev. Laws, 1877. Sec. 76; N. Y., Stat. 1881. L. 1874; N. D., Rev. Code, 1875. Sec. 759; Ohio, Rev. Stat. 1880. Sec. 4203; S. D., Annot. Stat. 1899. Sec. 2492; Vt. Rev. Laws, 1880. Sec. 669; Wash., Code, 1881. Sec. 3165; Wyo., Rev. Stat. 1887. Sec. 3949.

21. Keesecker, Ward W. Laws Relating to Compulsory Education.

22.  
laws.

The state constitutions of the several states make general provisions for instituting compulsory attendance, stating that the "legislature may require," or "shall provide," that every child must  
23.  
attend school. One state, Kentucky, provides for exemption on

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22. Ala., School Code, 1927. Sec. 301; Ariz., Code, 1928. Sec. 1029-1040; Ark., Laws, 1921. Act, 306. p. 360; Cal., School Code, 1929. Sec. 1.130-1.430; Colo., Comp. Laws Supple., 1932. Sec. 8468; Conn., Gen. Stat., 1930. Sec. 901-919; Fla., Comp. Laws, 1927. Art. 7. Sec. 504; Ga., Annot. Stat. Supple., 1932. Sec. 1444; Ida., Comp. Stat., 1919. Sec. 1018; Ill., Rev. Stat. 1929. Ch. 122, Sec. 301; Iowa, Code, 1931. Sec. 4410; Kans., Rev. Stat., 1923. Sec. 72-4801 to Sec. 72-4806; Ky., Stat., 1930. Sec. 4526 (c) 1-13; La., Laws, 1922. Art. 117. p. 242; Me., Rev. Stat., 1930. Ch. 19. Sec. 74-82; Md., Code, 1924. Art. 77. Ch. 21. Sec. 220-235; Mass., Gen. Laws, 1932. Ch. 76. Sec. 1-17; Mich., Comp. Laws, 1929. Sec. 7526, Sec. 7527; Minn., Stat., 1927. Sec. 3080-3091; Miss., Code, 1930. Sec. 6716-6724; Mo., Stat., 1931. Sec. 9433; Mont., Code, 1921. Sec. 1135-1140; Neb., Stat., 1929. Ch. 79. Art. 19; Nev., Comp. Laws, 1929. Sec. 5849-5857; N. H., Pub. Laws, 1926. Ch. 118. Sec. 1-17; N. J., Cum. Supple. to Comp. Stat., 1924. Sec. 185; N. M., Stat., 1929. Sec. 120; N. Y., Laws, 1930. Ch. 15. Art. 23; N. D., Supple. to Comp. Laws, 1925. Sec. 1342; N. C., Cons. Stat. 1924. Sec. 5434; Ohio, Code, 1930. Sec. 7762; Okla., Stat., 1931. Ch. 34, Art. 16; Ora., Code, 1930. Ch. 35. Sec. 2101; Pa., Stat., 1920. Sec. 5061-5066; R. I., Gen. Laws, 1923. Sec. 1034; S. C., Code, 1932. Sec. 5666; Tenn., Code, 1932. Sec. 2428-2442; S. D., Comp. Laws, 1929. Sec. 7642; Tex., Rev. Stat., 1932. Utah, Laws, 1917. Sec. 4642; Vt., Gen. Laws, 1917. Sec. 1243-1262; Va., Code, 1930. Sec. 683-686; Wash., Comp. Stat. 1929. Sec. 5072; W. Va., Rev. Stat. 1931. Sec. 1847; Wis., Stat. 1931. Sec. 40.70; Wyo., Rev. Stat., 1931. Sec. 99-334.
23. Colorado. Constitution, 1876. Article IX. Sec. 11.  
Idaho. Constitution, 1890. Article IX. Sec. 9.  
Wyoming. Constitution, 1889. Article VII. Sec. 9.  
Nevada. Constitution, 1864. Article XI. Sec. 2.  
New Mexico. Constitution, 1911. Article XII. Sec. 5.  
Oklahoma. Constitution, 1907. Article XIII. Sec. 4.  
Virginia. Constitution, 1902. Article IX. Sec. 138.  
North Carolina. Constitution, 1876. Article IX. Sec. 5.  
Delaware. Constitution, 1897. Article X. Sec. 1.

24.  
conscientious grounds.

The federal government requires compulsory attendance in  
the District of Columbia and in American Indian Reservations.  
25.  
The state Supreme Courts have upheld the state laws and provisions  
connected with compulsory attendance, including the right to require  
vaccination as a prerequisite to entrance. 26. In 1925, the United  
States Supreme Court decided that an attendance law in Oregon to com-  
pel children to attend only public schools was an infringement of  
rights guaranteed by the federal constitution. 27.

#### Textbook Control.

The textbook is a much disputed factor in the educational  
program. Who shall control the selection of textbooks and who shall  
own the books in the elementary and secondary fields of education  
are unsettled questions. 28. Not only are there controversies over  
the uniformity and ownership of textbooks, but difficulties arise over  
contracts involving large sums, relations with commercial concerns,  
and litigation regarding other phases of the textbook question.

Among the few points in which all of the states agree is  
that "neither the pupil nor his parent or guardian has any voice in  
the matter." 29. The power of a legislature to take away the privilege  
of a local school board to select textbooks has been determined as  
no legal infringement of rights. 30.

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24. Kentucky. Constitution, 1890. Sec. 5.

25. Federal Relations to Education. Report of the Advisory Committee  
on Education. Part II. p. 152.

26. 260 U. S. 174-177.

27. 268 U. S. 510.

28. Tidwell, Clyde. State Control of Textbooks. 1928. 78 p.

29. Trusler. Op.cit. p. 385.

30. 35 Cyc. 1128.



Twelve states have been so concerned as to incorporate<sup>31.</sup> plans and ideas about textbooks into their constitutions. California demands both uniform and free textbooks in her constitution; Virginia vests the power of selection in the state board; New Mexico and Oklahoma express approval of uniformity with infrequent change; Colorado, Utah, and Wyoming register the negative of state control, making it impossible without constitutional amendment; four states forbid teachers to have an economic interest in sales of textbooks.

A writer on school management in 1882 stated that the selection of textbooks was an "important duty left to the respective school<sup>32.</sup> boards. The teachers should be consulted." The data discloses, however, that in the period, 1873-1891, ten states had laws designed to<sup>33.</sup> obtain uniformity in text-book use in elementary schools.

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31. Virginia. Constitution, 1902. Article XX. Sec. 132-139.  
California. Constitution, 1879. Article IX. Sec. 7.  
Louisiana. Constitution, 1921. Sec. 261.  
New Mexico. Constitution, 1911. Article XX. Sec. 17.  
Oklahoma. Constitution, 1907. Article XIII. Sec. 6.  
Colorado. Constitution, 1876. Article IX. Sec. 16.  
Utah. Constitution, 1895. Article X. Sec. 9.  
Wyoming. Constitution, 1889. Article VII. Sec. 11.  
Illinois. Constitution, 1870. Article VIII. Sec. 4.  
Mississippi. Constitution, 1890. Article VIII. Sec. 210.  
South Dakota. Constitution, 1890. Article VIII. Sec. 17.  
West Virginia. Constitution, 1872. Article XII. Sec. 9.
32. Raub. Op.cit. p.55
33. Ariz., Rev. Stat., 1887. Sec. 1475; Cal., Codes and Stat., 1885. Sec. 1521; Me., Rev. Stat., 1884. Sec. 87. iv, 198; Minn., Gen. Stat., 1879. Ch. XXXVI. Sec. 156 to 168; Mont., Comp. Stat., 1888. Sec. 1928; S. C., Rev. Stat., 1873. Ch. XXXVII. Sec. 1-2; Utah, Comp. Laws, 1888. Sec. 1930; Va., Code, 1874. Title 23. Sec. 19; Wash., Code, 1881. Sec. 3165; W. Va., Code, 1891. Ch. 45. Sec. 58-59a.

1873	South Carolina	1885	California
1874	Virginia	1887	Arizona
1879	Minnesota	1888	Montana
1881	Washington	1888	Utah
1884	Maine	1891	West Virginia

Maine's Commissioner was empowered to direct what books  
34.

should be used. Sixteen had no laws concerning textbooks, and  
21 states left the selection to counties or districts. No state  
had state-wide free textbooks at this time.

Tidwell's study on the state control of textbooks shows  
for the period of 1895-1907, eight more states with laws for uni-  
35.  
form textbooks.

No state had adopted state-wide free textbook plans in  
1907. The data of the period, 1913-1932, show that every state had  
textbook laws. Two states, Oregon and Indiana, had no laws designed  
to permit free textbooks in the public schools. Eleven states,  
Colorado, Connecticut, Delaware, Massachusetts, Maine, New Jersey,  
New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont  
had no laws designed for state-wide uniformity. This shows variation  
in the laws, but leaves the majority of states with laws concerning

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34. Maine. Revised Statutes, 1884. Sec. 87, iv, 198.

35. Tidwell, Clyde J. State Control of Textbooks. P.

free textbooks and plans for uniformity.

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36. Ala., School Code, 1927. Sec. 437; Ariz., Code, 1928. Sec. 989, Sec. 1048; Ark. Laws, 1931. Art. 379. Sec. 5; Cal., School Code, 1929, Div. VI, Part II; Colo., Comp. Laws Supple., 1932. Sec. 8333; Conn., Gen. Stat., 1930. Sec. 829, 923-935; Fla., Comp. Laws, 1927. Sec. 852, 869; Ga., Laws, 1931. Act, 296, p. 136; Ida., Comp. Stat., 1919. Sec. 803, 989; Ill., Rev. Stat., 1929. Ch. 122. Sec. 502-514; Ind., Annot. Stat., 1926. Sec. 6480-6505; Iowa, Code, 1931. Sec. 4446, 4456; Ks., Rev. Stat., 1923. Sec. 72-4101 to 72-4113; Ky., Stat., 1930. Sec. 4421c-1-12; La., Laws, 1932. Act, 107. p. 398, Sec. 4; Me., Rev. Stat., 1930. Ch. 19. Sec. 44; Md., Code, 1924. Art 77. Ch. 10. Sec. 129-133; Mass. Gen. Laws, 1932, Ch. 71. Sec. 48; Mich., Comp. Laws, 1929. Sec. 7633; Minn., Stat., 1927. Sec. 3048-3057; Miss., Code, 1930. Sec. 6791-6830; Mo., Stat. 1931. Sec. 9270, Ch. 57. Art. 14; Mont., Code, 1921. Sec. 1187-1200; Nev., Comp. Laws, 1929. Sec. 5895-5903; N. H., Pub. Laws, 1926. Ch. 117. Sec. 14; N. J. Cum.Supple. Comp. Stat., 1924. Sec. 185-150 to 185-152; N. M., Stat. 1929. Sec. 120-105, 1601, 1701; N. Y., Cons. Laws, 1930. Ch. 15. Sec. 94; N. D., Supple. Comp. Laws, 1925. Sec. 1397-1398; N. C., Cons. Stat. 1924. Ch. 95. Subsec. XI. Art. 35; Ohio, Annot. Code, 1930. Sec. 7739; Okla. Stat., 1931. Sec. 6695-6742; Ore., Code, 1931. Ch. 32. Sec. 203, 1512; Pa., Stat., 1920. Sec. 4870; R. I., Gen. Laws, 1923. Sec. 934; S. C., Code, 1932. Sec. 5289; S. D., Comp. Laws, 1929; Tenn., Code, 1932. Sec. 2453-2471; Tex., Rev. Stat., 1932. Art. 2675, 2839, 2842; Utah, Comp. Laws, 1917. Sec. 4555; Vt., Laws, 1923; Va., Code, 1930. Sec. 617, 692; Wash., Comp. Stat. 1922. Sec. 4894; West Va., Rev. Stat., 1931. Sec. 1735; Wis., Stat. 1931. Sec. 40.28 (2); Wyo., Rev. Stat., 1931. Sec. 99-123.

### Standards.

Legal control tends inevitably to follow social need. When local initiative and experimentation have shown a rule to be of sound worth, and the majority of the communities of a state recognize it, then it is written into law and becomes obligatory on all. Such has been the history of reports, of compulsory attendance, of textbook control. The values of having minimum standards with which to select school building sites, construct buildings, determine proper physical equipment, health surroundings, and many more such school services, have been recognized by local school officials. To supply these standards has become part of the duties of state departments, either by law or by ordinance.

One of the phases of standardization that has particular control value is that of accrediting schools. Harry M. Thrasher, writing in 1931, states that the accrediting plan was first developed by a group of universities and colleges which gave certificates of admission to high school graduates whose transcript of grades indicated certain advancement.<sup>37</sup> The idea was first adopted by Michigan in 1871 and became a middle west feature of college admission with Indiana, Iowa, Wisconsin, Illinois, Ohio, Texas, Minnesota, and Missouri following in order to 1888. The North Central Association of Colleges and Secondary Schools was organized in 1895 with the idea of establishing some uniform standards for accrediting and articulating schools.

At this time there were no laws granting this power to

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37. The Development of the Accrediting Plan. The High School Quarterly, (1931) Vol. XX. p. 9.

state departments. In 1913, the Office of Education published its first report of accredited schools.<sup>38.</sup> It was compiled by Kendric Babcock who gave the name of the accrediting agency in connection with each state. The department of education of the state was listed as accrediting or classifying the secondary schools in Vermont, South Carolina, New York, New Mexico, New Jersey, New Hampshire, and Maryland. A special board was named for Massachusetts, Connecticut, Rhode Island; the superintendent of public instruction was responsible in Pennsylvania; both the university and the state department were listed for Missouri, Indiana, and Maine; and the other thirty-two states were accredited by their respective state universities.

In 1930, Margaret Carr compiled a like bulletin on accredited secondary schools. The agencies listed as responsible were state departments, universities, or a responsible accrediting association. Forty-four state departments at this recent date have methods of accrediting. Six states use both the state department and the university for this purpose: Arizona, Georgia, Illinois, Michigan, Wisconsin, and Wyoming. Three states, California, Colorado, and Nebraska, use the university plan, only. One state, Nevada, is listed as having no plan of accrediting.<sup>39.</sup> Through the seven bulletins dealing with credit agencies, which the federal bureau has published dating 1913, 1915, 1916, 1922, 1925, 1928, and 1930, the same definition of "an accredited secondary school" is used,--one which is equipped.

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38. Accredited Secondary Schools. Bureau of Education. Bulletin 1913. No. 29. p. 65.

39. Carr, Margaret J. S., Accredited Secondary Schools. U. S. Bureau of Education. 1930. Bulletin, No. 24.

to prepare students for colleges requiring 15 units for unconditional admission and which has been investigated and approved by one of the following agencies, a State officer of education, a college or university inspector or committee on admissions, an officer or committee of an accrediting association.

In 1932, the Government of the United States authorized a special survey of secondary education by a staff of specialists directed by Leonard V. Koos. A monograph on the articulation of high school and college was published in 1932, the results of inquiries sent to more than 2000 secondary schools and colleges. The plan most frequently employed by higher institutions in their efforts to improve articulation is "cooperation with state departments." Koos' study indicated that the acceptance of high school transcripts for unconditional admission to colleges had become the most popular method. 40.

Though the published bulletins give interesting figures for comparison, the data of this study discloses still more definitely that standardization as a control factor is becoming more and more a concern of legislators. The laws of nine states, California, Florida, Georgia, Indiana, Iowa, Rhode Island, Mississippi, Michigan, and New Hampshire, do not set out accrediting as a specific duty, but leave that to the discretion of the officers in the ordinance power they possess. The statements about inspection and prescribing courses of study, however, indicate there are standards set up by the state, as well as the machinery for classification. States in which the

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40. Koos, Leonard V. Articulation of High School and College.  
National Survey of Secondary Education. Bulletin. 1932.  
No. 17.

law specifies the power to classify and standardize the secondary and elementary schools are Pennsylvania, Wyoming, Tennessee, Minnesota, Massachusetts, New Jersey, Idaho, Illinois, North Dakota, Ohio, Oregon, Nebraska, Nevada, New Mexico. The states whose laws use the term "accredit" and which deal with the articulation of the high schools and the colleges within the state are Arkansas, Arizona, Oklahoma, South Carolina, South Dakota, Missouri, Montana, Kansas, and Washington.

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41. Ala., School Code, 1927. Sec. 78; Ariz., Code, 1928. Sec. 989; Ark., Laws, 1931. Act. 169. p. 488. Sec. 14; Cal., School Code, 1929. Sec. 2.1383; Colo., Comp. Laws, 1921. Sec. 8268; Conn., Gen. Stat., 1930. Sec. 833, 920-931; Fla., Comp. Laws, 1927. Sec. 494; Ga., Annot. Codes Supple. 1932. Sec. 1436 d, 14371; Ida., Comp. Stat., 1919. Sec. 803; Ill., Rev. Stat., 1929. Ch. 122, Sec. 3, Subsec. 7; Ind., Annot. Stat., 1926. Sec. 6911-6916, 6430; Iowa, Code, 1931. Sec. 3832. Subsec. 7; Kans. Rev. Stat., 1923. Secs. 72-5001, 72-103; Ky., Stat., 1930. Sec. 4395; Me., Rev. Stat., 1930. Ch. 19. Sec. 149, 83; Md. Code, 1924. Art. 77. Sec. 13, 14, 20, 30; Mass. Gen. Laws, 1932. Ch. 71. Sec. 3; Mich., Comp. Laws, 1929. Sec. 7369, 7432; Minn., Stat., 1927. Sec. 3029; Miss., Code, 1930. Sec. 6538, 6553; Mo., Stat., 1931. Sec. 9379, 9387-9447; Mont., Laws, 1931. Art. 148. Sec. 20; Neb. Stat., 1924. Sec. 79-1001; Nev. Comp. Laws, 1929. Sec. 5653; N. H., Pub. Laws, 1926. Ch. 117, Sec. 20; N.J. Annot. Supple. Comp. Stat., 1930. Sec. 185-21c; N.M., Stat., 1929. Sec. 120-105; N. Y. Comp. Laws, 1930. Ch. 15. Sec. 94; N.D., Supple. Comp. Laws, 1925. Sec. 283b12; N.C., Cons. Stat., 1924. Sec. 5392; Ohio, Code, 1930. Sec. 7645, 7651; Okla., Stat., 1931. Sec. 6759; Ore., Code, 1930. Sec. 35-203, 4109; Pa., Laws 1929. Act 175. Sec. 1302a, Laws, 1931. Act 144, Sec. 1307f; R. I., Gen. Laws, 1923. Sec. 1055, 1075; S. C. Code, 1932. Sec. 5289, 5480, 5481, 5424; S. D., Laws, 1931. Ch. 138. Sec. 2 (2), (13); Tenn., Code, 1932. Sec. 2316(5); Tex., Rev. State, 1932. Art. 2663 b-1, 859; Utah, Laws, 1925. Ch. 75. Sec. 4505; Vt., Laws, 1923. Act. 32. Sec. 17. Gen. Laws, 1917. Sec. 1313-1317; Va., Code, 1930. Sec. 649; Wash., Comp. Stat., 1922. Sec. 4529 Fifth; W. Va., Rev. Stat., 1931. Sec. 1731; Wis., Stat., 1931. Sec. 40.39. 39.26; Wyo., Rev. Stat., 1931. Sec. 99-113.

The state constitutions are silent on the subjects of accrediting and standards as applied to education, except the general terms that allow the use of permissive power.

In connection with federal aid, the federal government has set up certain standards as requirements to be enforced by the federal agencies arranged to handle the funds provided by Congress. There are no federal authorities for articulating the classes of schools one with another. The Bureau of Immigration prepared a list of accredited schools for the attendance of aliens. This list is the only attempt of the federal government to accredit schools, independently of the states or of private agencies. The<sup>42.</sup> list of schools so accredited in 1929 was 1391.

The American schools have graduated steps of progress throughout the educational system from the primary to the university. In this plan the system of accrediting by state officers, which has followed the lead of educational specialists in universities and in special organizations, has a significant place. The publication of the lists by the Office of Education is an influential device that aids in the increased use of this mechanism of control.

#### Control of Radio.

One of the new mechanisms for control in education which is still in the experimental stage is the radio. It is of interest to this investigation because the legal data is confined to federal law, a peculiar feature for any mechanism in the educational field.

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42. Annual Report of the Commissioner General of Immigration.  
1929. p. 23.



The legal regulations by state authorities so far have been concerned with attempts to restrict slander<sup>43.</sup> and to compel the use of radio for certain police duties.<sup>44.</sup> Because of the physical qualifications, the medium necessarily interests larger communities than those bounded by state lines.

As early as 1924, Commissioner Tigert stated: "The school, the library, and the newspaper are usually ranked as the three great educational agencies. The radio promises to take its place as the fourth, and it appears to be fast fulfilling that promise....."<sup>45.</sup> Secretary of the Interior, Wilbur, said in 1931: "We must admit that no one knows just what radio will do in education.....it can reach every ear in the United States, regardless of college degrees, color of skin, profession, or economic status.....we do not want too much centralization in the control of it."<sup>46.</sup> In a 1932 publication in research problems in education, W. W. Charters stated:

"While the value of radio as a medium of education is generally accepted, the extent of its service is not known. Some claim the radio will usher in the master teacher and provide an exit for the mediocre classroom instructor; others believe that it represents the lecture method at its worst."<sup>47.</sup>

In 1923, California's Commissioner of elementary schools

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43. Ohio. Code, 1930. Sec. 13431.1; Illinois, Revised Statutes, 1929. Sec. 4, Ch. 128 California, Code, 1932. Sec. 258.
44. Maine. Laws, 1927. Act, 140. Sec. 30.
45. United States Department of the Interior, Office of Education, Bulletin 20, 1931. p. 3.
46. Wilbur, Ray Lyman. The Radio in Our Republic. School and Society, May 30, 1931.
47. Research Problems in Radio Education. 1933. p. 3.

broadcast talks to the schools. Since that time, experiments have varied and multiplied over a wide range. Prominent city experiments were conducted in Oakland, Cleveland, Atlanta, and Seneca, N. Y. A county experiment was made in Cook County, Illinois. State experiments included the Ohio School of the Air, which reached 29 states; and Arkansas, where the state superintendent learned he could reach 112 Smith-Hughes schools which had required 3 months to reach by automobile. Group experiments were made in Kentucky, Kansas, North Carolina, Florida, South Dakota, Colorado, Illinois, California; national experiments were made in music and lecture by the National Broadcasting Company and the  
48.  
Columbia School of the Air.

The above statements are an indication of the growing interest in education by radio and is not a complete review of the radio activities in education.

The first legislation was the Radio Act of 1927, an act of Congress which became necessary to meet an unprecedented situation which threatened chaos in the field of Radio. Previous to this enactment, the United States Attorney General gave an opinion that the Secretary of Commerce had no discretion in the matter of  
49.  
granting or refusing radio licenses. The resulting situation brought about this important Radio legislation by Congress.

Radio knows no state lines in effect and the term "serving zones" was used. The states were recognized, however, and assigned

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48. Perry, Armstrong. Radio and Education. Biennial Survey of Education in the United States. Bulletin 1931. No. 20.

49. U. S. 29 Opp. Atty. Gen. 579.

certain amounts of the total broadcasting privileges. Even this much recognition of states rights in the new field has caused much litigation, and the extent of state control of radio is constantly being tested in judicial tribunals. The Radio Commission created by the Act of 1927 is a board of federal educational administrators with large powers of potential control which includes appointment, approval, ordinance, standards, and adjudication.

The Act directs the Radio Commission to regulate and control radio broadcasting. All stations are required to be licensed by the Radio Commission before being allowed to operate. The power to grant this license is in the Radio Commission; and in determining who should have licenses the same administrators were empowered to classify stations, determine the nature and service of each group, allot wave lengths or frequencies to certain groups and to individual stations, allot time of operation, and determine locations. The Radio Commission was given authority to enact rules and regulations for the guidance of broadcasting stations, and issue licenses only if the operation of the station would "serve public interest, convenience, and necessity." This standard is probably the most widely discussed feature of the radio law. The question of the right of Congress to regulate radio has been tested in the Supreme Court.

The rights of the Commission have been tested against property deprivation without "due process." It has been held by the Supreme

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50. U. S. 44 Stat. 1169. Sec. 16, Sec. 9.

51. U. S. 29 Fed. (2nd) 113. 282 U. S. 367.

52. 282 U. S. 367.

Court of the United States that the Federal Radio Commission is purely an administrative body to carry out the Radio Act of 1927 and amendments thereto. The proceedings of the District Court of Appeals of the District of Columbia, which reviews decisions of the Radio Commission, are purely administrative and are not reviewable by the Supreme Court of the United States.

### Summary.

The mechanisms of control discussed in this chapter are reports, compulsory attendance, textbook control, standards or accreditation, and radio.

Official reports constitute one of the oldest methods of contact between an administrator and the school. From being a device used by teachers as an aid in school management, it has grown to be a requirement in every state, and in connection with federal aid, in the federal government. There is no authority as yet to require state departments to make reports to the Office of Education at Washington, but this is regarded as a handicap, since many of their publications must include a statement of the percentage of responses to the request for reports. In several states the constitutions are concerned with reports from state officials to the legislature or to the governor. State courts uphold the legal right to require reports and to fix a penalty for failure in this duty.

Compulsory attendance laws were enacted during the early period from 1873 to 1891 in sixteen states. Statutes of the recent period from 1913 to 1932 contain compulsory attendance laws for every state and include many paragraphs setting forth rules and regulations for enforcing universal attendance. Ten states have written some form of provision for compulsory attendance in the constitution. The early attitude of the courts was one of supporting the right of the state in controversies concerning attendance. In 1925, the Supreme Court held that Oregon's law to compel children to

attend only public schools was an infringement of rights guaranteed by the federal constitution, thus setting a limit upon the rights of a state in this field. The report of Judd on Education in Recent Social Trends strengthens the findings from the data of this study on compulsory attendance by stating that since 1900 the age or number of days of required attendance has been advanced in every state except Maine, who strengthened her law in 1899. In being given the power to enforce compulsory laws the state departments have had a definite increase of control.

Ten states had laws which were designed to obtain uniformity of textbooks in the early period of data, and constitutions of twelve states contain textbook directions. Three states are opposed to state control and will require a constitutional amendment before such may be accomplished. Every state in the recent period has a textbook law, but there is much disagreement as to the agency of control. The laws passed since 1925 indicate a tendency toward more state control in both uniformity and free textbooks. The attitude of the legislators in dealing with this subject, when the adjudication powers of state officials are considered in connection with it, is to place more authority in the state officials.

From the data of the study, which shows little interest in accrediting and standards in the early day, but which shows during the recent period 44 state departments empowered to accredit the secondary schools to higher institutions, it is evident that state control has increased very decidedly. Federal standards are made in connection

with federal aid and in connection with radio.

The radio, as a control mechanism, is as yet almost wholly in control of the federal authorities. The only law which concerns education by means of radio is federal. Because of the unprecedented physical qualities, and the potentialities of this device, it seems to be a centralizing influence beyond the power of the states to control or regulate.

As samples of mechanisms of control, the five discussed in this chapter demonstrate a centralization of control in each instance.

TABLE XII

LAWS CONCERNING SELECTED MECHANISMS FOR CONTROL IN EDUCATION

B 1873-1891 A 1913-1932	Compulsory									
	Reports		Attendance		Textbooks		Standards		Radio	
	A	B	A	B	A	B	A	B	A	B
Federal	X	X					X		X	
Alabama	x	x	x		U		x			
Arizona	x		x		U F	x	x			
Arkansas	x		x		U		x			
California	x		x	x	U F	x	x			
Colorado	x		x				x			
Connecticut	x		x	x			x			
Delaware	x		x		U F		x			
Florida	x		x		U		x			
Georgia	x	x	x		U		x			
Idaho	x		x		U		x			
Illinois	x		x				x			
Indiana	x		x		U		x			
Iowa	x	x	x				x			
Kansas	x		x		U		x			
Kentucky	x		x		U F		x			
Louisiana	x	x	x		U		x			
Maine	x		x	x	F	x	x			
Maryland	x		x		F		x			
Massachusetts	x		x	x	F		x			
Michigan	x		x	x		x	x			
Minnesota	x		x				x			
Mississippi	x	x	x		U		x			
Missouri	x	x	x				x			
Montana	x		x	x	U F	x	x			
Nebraska	x		x		F		x			
Nevada	x		x	x	U F		x			
New Hampshire	x		x	x	F		x			
New Jersey	x		x	x	F		x			
Mexico	x		x		U F		x			
New York	x		x	x			x			
North Carolina	x		x		U		x			
North Dakota	x		x	x			x			
Ohio	x	x	x	x			x			
Oklahoma	x		x		U		x			
Oregon	x		x		U		x			
Pennsylvania	x		x		F		x			
Rhode Island	x		x		F		x			
South Carolina	x		x		U	x	x			
South Dakota	x		x	x	F		x			
Tennessee	x		x		U		x			
Texas	x		x		U F		x			
Utah	x		x		U F	x	x			
Vermont	x		x	x	F		x			
Virginia	x		x		U	x	x			
Washington	x		x	x		x	x			
West Virginia	x		x		U	x	x			
Wisconsin	x		x				x			
Wyoming	x		x	x	F	x	x			

F = Free textbook laws U = Uniform textbook laws x = Laws



## CHAPTER VI

### GENERALIZATIONS

It is the special purpose of this chapter to summarize the findings of the recorded data on educational control, and to analyze them with reference to centralization in education. They have necessarily been selective. To read and classify all of the laws and rulings of our nation's governmental agencies would be an overwhelming task. A selection of topics for special discussion has been made from among those seeming best to illustrate the shift or movement in educational control. The chosen topics are - appointive power, ordinance power, and certain legal mechanisms of control in education. From the study of these legal agencies an attempt is made to gain an insight into one of the significant trends in American education.

It is plain that a study of educational legislation can only be understood in its relation to social and economic movements. These bring about and condition the written law. Consequently, it is in the light of the history of social and economic forces, that the data must be examined. Therefore, brief sketches of the evolution of certain educational movements have been added to this study. The miscellaneous reports of educational agencies and related literature have afforded the material for these sketches. They include the pre-legislative development of the Land-Grant Col-

leges, the Office of Education, Co-operative Extension Work, official reports, educational standards, radio control, appointment power, and ordinance power.

The American school system has been termed a creation of law. There is no such organization as a national school system in the sense that it is controlled by a single authority. No educational forms are created by law in the sense that law initiates the movement. Nevertheless the great network of schools in America constitutes a system that sets these institutions apart from education in other nations. It is possible for a pupil in America to move his residence every few months throughout his educational experience and be accredited from one school to another, and from one state to another, so that his progress is continuous. Among the subdivisions in the Office of Education, two have come to be known as Foreign School Systems and the American School System. The Chief of the American School System serves under the Research and Investigation Division, and the name merely implies that he is in charge of fact finding services in the American field of education.

The initial demands or bases for support and encouragement of schools were written into legal documents by the founders of our government. The Massachusetts constitution of 1780 and the Ordinances of the Continental Congress in 1785 and 1787, are examples of these demands. These initial plans for democratic education and of public endowment are still the patterns for the foundations upon which American public schools are built. In that sense only is the American

school system a creation of law. Previous to the enactment of law is found an evolution of educational thinking illustrated in this study by the pre-legislative sketches.

For many years students of education and of government have been aware of a shift in educational control. As conditions and social development have made possible larger units, many aspects of control have shifted from local to state officials and some are gradually shifting from state to federal authorities in education. Phases of this shift have long been apparent. The present study shows definitely this transfer, as is indicated in the laws, statutes, constitutions, and judicial decisions of government.

These records show the entrance and development of federal participation in education. They show the co-operation of state and federal government; increased judicial recognition of educational problems; the cases in which the decision of the Supreme Court of the United States limits the power of the Commonwealth in legislation on education, and where the State Supreme Court upholds the right of the Commonwealth as against the rights of parents in the education of their children. The data of this study reveal a trend toward centralization through selected legal mechanisms, reports, compulsory attendance, textbook control, and standards, from local control to state requirement and enforcement. Of more significance is the shift in appointive powers and ordinance powers. In addition to the specific measurable increase in numbers of appointed officials in education the nature of appointive and ordinance powers contain an immeasurable

potentiality.

When John Adams expressed the will of the people of Massachusetts in the Constitution of 1780 he stated the demands of a people who believed in democratic education. Subsequent history has not changed the belief that the opportunities of education should be "spread to various parts of the country" and "to all orders of people." The Massachusetts article on education has been unchanged through a century and a half of educational development and stands unchanged in 1933. Only five of the original Commonwealths placed an educational clause in their constitutions. These proved to be leaders. All the other Commonwealths eventually amended their old constitutions or adopted new ones containing an educational clause. South Carolina was the last state of the original group to include it. In 1868, she wrote an article on education, containing eleven paragraphs. It was incorporated and adopted in the new constitution. Since 1868, no Commonwealth has failed to include education in the fundamental law. In 1933, the total number of paragraphs in the 48 constitutions had reached the number of 440. The wisdom of placing so many definite statements in the constitution has been questioned. No one questions the intention of America to make education a responsibility of her government.

Before the adoption of our Federal Constitution, the Continental Congress of 1785, representing pioneers of our democratic government, laid a practical foundation of endowment in an ordinance which aimed to guarantee that the means of education would be avail-

able when society was ready to organize schools. In 1787, the Continental Congress pledged the government to the encouragement of education. Territories were required to take steps to provide education before the federal government recognized them as states and accepted them into the union.

The federal constitution fails to mention education specifically, as it fails to mention public health, or banking. "General welfare" has been interpreted in the light of social and economic conditions in each generation. The Supreme Court of the United States is the ultimate arbiter, actually or potentially, of constitutional clauses. Decisions of this tribunal on the meaning of "general welfare," and on the meaning of "personal liberty" and "due process" have not remained static. They have reflected the evolution of social thinking. The pressure of society brings a challenge to a law enacted by Congress or by state legislatures before the Supreme Court speaks. Hence, so long as society does not object to certain laws, and they remain unquestioned, the Supreme Court is silent regarding them.

In 1818, in the Dartmouth College Case, Chief Justice Marshall stated in his opinion:

"Education is an objective of national concern, and a proper subject for legislation."

In 1903, in a case outside of the educational field, *Muller v. Oregon*, Justice Brewer stated an opinion, which later led to decisions of great importance to education:

"Constitutional questions, it is true are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form, limitations upon legislative action, and these give a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in regard to that fact, a wide-spread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge."

This recognition led eventually to the important decision limiting a state on legislating with extreme prejudice. Attempts by the Commonwealths to bar the German language or to force children to attend Protestant schools, were halted by the Supreme Court. It was "general knowledge" that waves of prejudice brought these laws into existence. The wider community - the United States- found them repugnant to the Federal Constitution. The far-reaching influence of the decision in 1923, concerning the German language, is illustrated by a law passed by Texas in 1929, adopting a full set of German Text-books for use in the public high school.

The illustrations are not in themselves important. The significance to education and to educators is in the fact that the Supreme Court has intervened in the matter of curriculum making. A Federal authority has acted as a check to extreme governmental domination of education by the Commonwealth.

Appointive power in state and federal participation in education is one of the principal topics of this study. The data reveal the shift in popular attitude toward appointment as recorded in constitutions and laws.

Appointive power in education by authority of state constitutions increased from one state in 1880 to ten states in 1932. The laws of the period from 1878 to 1888 record a significant appointive power granted to the governors of five states. Laws of the period from 1922 to 1932 show significant appointive power of the governors of 39 states. The early period records seven appointed chief state officials in education; in the latter period that officer was appointed in 18 states. Based upon the number of states in the union at each date this represents an increase from popular election to appointment from approximately 18% to 38% of the chief officers in education in the Commonwealths.

There is a still greater increase of appointment power in connection with the state boards of education. The data of the period, 1878-1888, show that only three state boards of education were appointed at that time. The data of the later period, from 1922-1932, show that the governors of 39 states appoint members of state boards of education. Twenty-five of these state boards are in turn empowered to appoint educational officials ranging in importance from clerks to the state commissioner of education.

The significance of this trend from elected to appointed officials in education must be noted in relation to the social conditions influencing the appointments. The governors are elected. They are necessarily political officials. When they are empowered to appoint educational officials in central authority, the voters of the Commonwealth pay little attention to the individual chosen. The voters judge

the local results of the services as they come in contact with them through local educational agencies. The natural result is that the politically dominated governor seeks a specialist, a trained official in educational matters to handle educational affairs. This shows a recognition of the technical and functional duties of educators. It shows growing appreciation of the profession of education and a growing popular demand for the service of properly qualified administrators. This fact increases the significance to education of any shift of educational control from elected to appointed officials.

The authority for federal appointments in education is in the Federal Constitution and in the Congressional Enactments. The first administrative duties by federal officials were delegated to heads of governmental departments. In 1862 the Secretary of the Interior began to receive and approve or disapprove the reports of conditions in the states with reference to land-grants for colleges. In 1867, this service, along with other duties of the bureau, was delegated to the Commissioner of Education. Increased personnel were listed as assistants and clerks until 1887 when a Director of Experiment Stations was appointed in the Department of Agriculture. In 1895 the Chief of Land-Grant Colleges was appointed to serve under the Commissioner of Education. In 1920, the Secretary of War was charged with the administration of the National Defense Act. The fields of federal participation in education selected for investigation in this study include the administrative officials in the three departments mentioned above, and two independent establishments known as the Federal Board for Vocational



Education, and the Federal Radio Commission. The personnel in these federal educational activities included in 1930, approximate totals of 350 in the Washington staffs; 1700 in State Boards, Agents, and Directors; 30,000 in instructional staffs of Land-Grant Colleges, vocational teacher training, and military education; and 30,000 secondary instructors of vocational education, agriculture, and home economics.

It is noted that this participation of the federal government in education is concerned mainly with the agricultural and industrial classes. The Acts authorizing most of these are responses to a social need for equalization of opportunities. The Commonwealths have universally accepted this federal co-operation and its various provisions for federal administrators. None have withdrawn from it. On the contrary, the sequences of laws and amendments have definitely and more or less continuously increased the services.

The significant aspect of this federal participation in education is the growth from non-existence in 1860 to a corps of federal appointees of approximately 70,000 in 1930. These represent administrative and instructional services on all levels of learning in elementary, secondary, and higher education. They represent groups of subordinate officials in local, county, state, and regional centers, headed by federal officials in various staffs in Washington.

Further analysis of the work of the departments and bureaus selected for investigation shows much co-operation between private educational organizations and the federal bureaus and boards. Joint investigations and joint reports are made. The influence and requests

of the Association of Land-Grant Colleges brought congressional support for a national survey of these schools begun in 1928. The Office of Education directed the survey with complete freedom. Arthur Klein wrote the report of this survey which was published in 1930, in two volumes. Other surveys, supported by federal funds have followed. The most recent are the three which were authorized by Congress in 1932 under the titles Secondary Education, Teacher Training, and School Finance.

Other results of co-operation are the Report of the Committee of Fifty on Education and of the President's Research Committee on Recent Social Trends. The reports of the latter were published in 1933. The combined findings are recorded in two volumes of 1400 pages. The complete monographs are published in 13 volumes. These special reports contain valuable collections of facts and discussions of trends in education. The appointments in connection with all of these services are often of a co-operative nature. Educational experts serve under the general direction of federal officers. It is impossible to evaluate the educational control involved in these great fact finding and investigating movements. It is indirect and necessarily unmeasurable, but that national co-operative surveys have extensive control value in education is unquestionable. They bring about a more complete understanding of national responsibility for education. In addition, centralized movements increase the popular understanding of the various educational problems of neighbor commonwealths.

Of further significance to education are the contacts between leaders of special fields, occasioned by national investigations. The exchange of information between groups who perform different functions increases mutual appreciations and confidence. It broadens and deepens mutual understanding of related problems.

The increase in appointment powers granted by law places education more and more in the hands of trained officials. The next step and in some ways the least measurable is the extent of ordinance power and judicial power granted to educational officials, whether elected or appointed. These powers enable the officials to meet educational needs as they arise, rather than to be limited by some specific mandatory law. The powers are usually couched in terms which permit officers to make "rules and regulations." The powers are more definite when the law includes the statement that these "rules and regulations" shall have the "force of law."

It is in the field of ordinance powers that educational administration in the states and the nation has most extensively expanded, though the measurement of the increase here, too, is difficult to state statistically. In the data of this study for the early period, 1878 to 1888, nine commonwealths placed certain ordinance powers in state officials; in the data of the recent period, 1922, 1932, thirty-nine commonwealths granted such powers to educational officials. In the early period state boards of five states were empowered to decide appeals from decisions on school law, made by county or district officials in local controversies.

The laws of the recent period record varying degrees of judicial power for state boards in 18 states, and for the state superintendent, or state commissioner, in 21 other states.

The ordinance making powers of federal administrative agencies in education were initiated in the Acts of Congress creating those agencies. The acts were necessarily general in statement of purpose. The grants of lands and of funds in support of education normally called for oversight of such funds. The administrative agencies were empowered to make departmental rules. They were called upon to make decisions and interpret the meaning of the clauses of the Acts.

The Interior Department, through the Commissioner of Education and the Chief of Higher Education, has made such rulings, decisions, and interpretations in regard to Land-Grant Colleges. The Agriculture Department, through the Secretary and Directors of Divisions, has exercised this power in regard to Experiment Stations and Co-operative Extension Work. The Federal Board for Vocational Education has used this ordinance power in carrying out the provisions of vocational education and Civilian Rehabilitation. The Federal Radio Commission has been given such power in the field of education by radio. The War Department, through the Secretary, has made rulings concerning military education.

The growth in educational operations in which the federal government participated has necessitated an increasing variety of regulations. Such development has been needed for proper functioning

of the federal Acts concerning education.

As appointment power secures the services of specialists and experts, so ordinance power secures the freedom that must be granted to technically trained men to obtain desired results. The difference between the function of political government and the function of education is recognized in grants of ordinance power.

The trend in the laws of the Commonwealths as well as in Congressional Acts has been continuously toward grants of more power to make "rules and regulations" and to strengthen them by giving them the "force of law."

Selected legal mechanisms of educational control, as evidenced by the data of this study, have evolved in a slow and devious manner. Official reports have opened the way for centralization. They were at first found of value in disbursing funds in the Commonwealths and were urged upon local teachers as checks to indicate whether certain accomplishments had really been made. Also, they were found of value in pointing the way for new proceedings. Reports from local districts to county officials, and from the county officials to state officials in education, were required by ten Commonwealths in the early period of data, 1878 to 1888. Other states at this time printed blank forms which were sent out to local officials with requests for returns. Neglect to make complete returns led to enforcement clauses in the laws. The data of the period from 1922 to 1932 show that every Commonwealth made reports from local units to state departments a lawful requirement. The supreme courts have

upheld the enforcement clauses, which usually give power to withhold salary checks until reports are made. In the New Hampshire Case of the School District v. Tuttle, the state supreme court decided that if a school committeeman pays school funds to a teacher who has not filed the required report, the district may sue the committeeman to recover such money. In the case of Brown v. Chesterville in the courts of Maine, the teacher who had neglected to make reports was denied recovery of his salary.

A need for educational information of a national character arose and by the Acts of 1867 and 1869 the Office of Education was created. For three or four decades its chief function was to collect facts and make reports. Blank forms were sent out from the Office. In many divisions of the Office, they are still sent with a "request" for returns. When even a small per cent neglect to send them, the final findings cannot be complete. In 1930, state departments and universities responded to the Biennial Survey 100%. Less than 60% of some types of secondary schools responded.

In connection with the federally aided projects in education, reports have been required of certain officials since 1862. The first Morrill Act required reports to be made by the executives of the Land-Grant Colleges, "recording any improvements and experiments made, with their cost and results.....". One copy was to be sent to the other Colleges, and one copy to the Secretary of the Interior. By the same Act, Governors were required to report annually to Congress concerning the disposal of scrip or land which had been granted for education. In 1887, reports were required to be made by

the Directors or Executives of Experiment Stations. In 1890, a device for enforcing reports was placed in a Congressional Act concerning all Land-Grant Institutions. A procedure was outlined in the Second Morrill Act which gave the Secretary of the Interior power to demand the reports before he certified to the Secretary of the Treasury as to whether a State or Territory was entitled to its share of the federal funds allotted for the Land-Grant Institutions. In all subsequent Acts for federal aid in education, the power to withhold funds has been granted to the agency delegated to administer the Act. This is an effective device in securing reports, both in Commonwealths and in federal aid, as shown by the numerous Acts adopting it.

Among the legal mechanisms for control chosen for this study official reports are the oldest and have developed legally from the stage of furnishing blanks in most Commonwealths in the earlier period, 1878 to 1888, to a lawful requirement in all of them in the recent period, 1922 to 1932. Some reports in connection with federal aid are "required" and the demands made enforceable by withholding funds. The greater number of federal reports in 1930, however, were for information, advice and investigation, and depended upon requests and volition. Even upon this basis the federal interest in education is shown in the development of a great fact-finding commission, whose reports and national surveys are exceeded in importance in no other country.

The whole centralizing movement in education may be seen in this evolutionary process traced through the data concerning reports.

On the basis of what has transpired in the states, it is not unreasonable to suggest that some device will be found with which to compel all units to report educational conditions to a national agency. The need for accurate surveys upon which to base educational planning makes this desirable.

Compulsory attendance, another legal mechanism of control is in wide use in education. Schools were organized first as "free schools". Many constitutional paragraphs still retain the name, "free schools". The laws reflect very clearly the transition of the educational attitude from free schools to compulsory school attendance. Before 1890, one-third of the Commonwealths had compulsory attendance laws. By 1930, all the Commonwealths had compulsory attendance laws with methods of enforcement in every state in the union. Parents may no longer make the decision nor may local authorities shirk the obligation to see that all children attend school. State powers are delegated to state officials who demand and enforce the education of youth.

The Supreme Court of the states of New Hampshire and Indiana have ruled that a compulsory education law is not unconstitutional as an invasion of the natural rights of the parent to govern and control his child. That the legislature may compel parents to perform the natural duty of education owed their children was decided in the cases of State v. Bailey in Indiana and State v. Jackson in New Hampshire.

The Supreme Court of the United States found in the case of



Zucht v. King et al, in 1922, that a city ordinance making vaccination a condition to attendance at public or private schools is consistent with the Fourteenth Amendment. Mr. Justice Brandeis in stating the opinion of the court referred to a decision in 1905, in *Jacobsen v. Massachusetts*, in which it was settled

"that it is within the police power of a State to provide for compulsory vaccination....."

The police power of the state was brought into question in Massachusetts in another phase of education when that Commonwealth passed an educational law with regard to the transportation of pupils to and from school. Mr. Justice Holmes delivered the opinion of the court. Among other things he stated:

"Education is one of the purposes for which what is called 'police power' may be exercised....."

Another case in which the Supreme Court upheld the right of a state as against local authority in an educational matter was *Kies v. Lowry*, in 1905. The case in question concerned the right to change the boundary line of a school district. Mr. Justice McKenna delivered the opinion of the United States Supreme Court in part, as follows:

"We may rest upon the opinion of the Supreme Court of the State and the case of *Laramie v. Albany County et al.* 92 U.S. 307. It is there said in many ways with citation of many supporting cases, that the legislature of a State has absolute power to make and change subordinate municipalities. The following quotation meets exactly the contentions..... 'Institutions of the kind, whether called counties or towns are auxiliaries of the State in the important business of municipal rule.....the legislature possesses the power to divide counties and towns at their pleasure and to apportion the common property and the common burdens in such manner as to them seem reasonable and equitable!'"

A famous case in which the Supreme Court of the United States nullified the attendance law of a Commonwealth is known as the Oregon Case. The legislature of Oregon enacted a law to compel the children of Oregon to attend only public schools. While the question of property rights and many points of procedure were raised in the case, the real question at issue was whether a Commonwealth can require attendance at the public school. The question is discussed by the court from the opposite angle.

"No question is raised concerning the power of the state to reasonably regulate all schools; to inspect, supervise, and examine them, their teachers and pupils, to require that all children of proper age attend some school.....that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.....Under the doctrine of Meyer v. Nebraska, we think it entirely plain that the Act of 1922 [Compulsory Attendance Act, designed to compel children to attend Protestant Schools] unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control..... The fundamental theory of liberty upon which all governments in this union repose, excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligations."

Thus the Commonwealth is halted by a federal authority when educational legislation becomes unreasonable.

As examples of control mechanisms which are still in the experimental stage in education, this study includes investigations of textbook and radio laws. As shown by the data the legal control of textbooks is a growing and unsettled problem in many of its phases. Ten Commonwealths had laws attempting uniformity before 1890. By 1930, some type of textbook law had been written into the

statutes of every Commonwealth. These laws present divergent views. That plans for uniformity of textbook adoptions have grown in number is evidenced by laws in 37 Commonwealths designed for uniformity. Forty-six states have adopted laws permitting or enforcing free textbooks. Three states forbid state control by constitutional law. The many sections in the laws of those states having control indicate the difficulty to be met in safeguarding education. Commercial and educational interests do not always harmonize on textbook problems. The data of this study show the trend to be toward both uniformity and free textbook distribution.

In 1923, the Supreme Court of the United States in *Meyer v. Nebraska* (262 U. S. 390) reviewed a case that had to do primarily with a matter of the curriculum and indirectly with textbooks. For the first time the federal court reviewed a case in a field that had always been left to the Commonwealths, that of strictly education<sup>al</sup> matters. In 1919 Nebraska passed a law making it a crime "to teach any person in any language other than the English language, or to teach any language other than the English language to a pupil before he shall have attained and successfully passed the eighth grade." It was uncontroverted that Meyer taught in German the subject of reading to Raymond Parport, a child of ten years. The latter had not attained and passed the eighth grade. Meyer was found guilty by the Nebraska Supreme Court. (107 Neb.675.) The case was appealed to the Supreme Court of the United States.

Mr. Justice Reynolds in rendering the opinion of the Court said:

..."Mere knowledge of the German language cannot be reasonably regarded as harmful; heretofore, it has been commonly looked upon as helpful and desirable. Plaintiff in error (Meyer) taught this language in school as a part of his occupation. His right thus to teach and the right of parents to engage him to so instruct their children, we think are within the liberty of the Amendment. (Fourteenth Amendment to the Federal Constitution).....a desirable end cannot be promoted by prohibited means..... No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed....."

These decisions of the Supreme Court of the United States in regard to attendance and curriculum, as indicated in the famous cases in Nebraska and Oregon, show clearly that a Federal Authority in recent years ruled in the educational field that was long considered to be reserved exclusively<sup>to</sup> the jurisdiction of the states. It indicates a trend toward nationalism of interest and oversight that is of great significance.

The legal control of the transmission of education by radio is completely conditioned by physical factors. As a device for centralization of educational control, it offers a wide potential opportunity. The Radio Act was passed by Congress in 1927, and amended in 1929. In 1931, Congress appropriated funds to support a division of Education by Radio in the Office of Education. The Federal authorities have recognized radio control in law and in education. Less than a decade of time has brought into existence a Federal Board with strong powers of inspection, approval, licensing, and control of educational program transmission. Legislation by federal authorities has acted directly in educational matters and ig-

nored the tradition that education is a prerogative of the Commonwealth. The nation is divided into large units, entitled "serving zones". Two national schools of the air have been tried out with as many as twenty-nine states reporting. In 1933, a national experiment in music was in the fifth year of development, and the number of child listeners was estimated at a minimum of 2,000,000. Thus a national schoolmaster, with the consent of state officials and the cooperation of local teachers, enters the local school room.

Perhaps the most phenomenal legal mechanism in the field of educational control is that of standardization. Here, as always, legal control tends to follow educational need. Standard regulations were first established for the selection of sites for school buildings. Standards for the construction of buildings followed and led the way to minimum standards for equipment, courses of study, and eventually to accreditation.

The history of the growth of standardization places the beginning of accreditation with a group of educational institutions in Michigan in 1871. A plan was evolved for articulating education from one of the various levels of learning to the next. It met a need which other states soon recognized. College groups in Indiana, Iowa, Wisconsin, Illinois, Ohio, Texas, Minnesota, and Missouri adopted plans of accreditation before 1888. These plans prescribed minimum standards which secondary schools must meet in order to be accredited to higher institutions. Until 1888 the movement was outside the field of government. It was carried on within the field of organized education. No laws were found in the statutes of that time concerning

it. In 1913 the Office of Education published a bulletin which contained a list of accredited secondary schools in the United States. It named the accrediting agency of each state group. At that time only six state departments were listed as having accrediting power. In 1930 the Office of Education published the sixth report on this subject. Forty-four state departments were listed as having accrediting power. Three states, California, Colorado, and Nebraska, still retained the university or college plan, and one state, Nevada, was listed as without accrediting facilities. The laws of the period of 1922 to 1932 reveal a growing concern of legislators toward standardization. State educational officials have ordinance power for accrediting in sixteen states. The more recently enacted laws direct the state officials to prescribe the rules for accrediting graduates of the secondary schools to the higher institutions of learning. In the better organized state systems, educational planning has provided a single line of progress from the elementary to the higher levels of learning. This is made possible by establishing accrediting agencies.

Standards which are enforceable by the federal government have been set up in connection with federal aid programs. In 1890, the Second Morrill Act set limits upon the curricula. The Smith-Hughes Act of 1917 directed the Federal Board for Vocational Education to pass upon standards set by the Commonwealths. The Act required the Commonwealth to set up standards of qualifications for instructors, standards for plants and equipment, for schedules of courses, and for

state administration of the vocational program. Subsequent acts authorizing Federal Aid contain some type of standard for regulating federally aided schools. No funds are recommended until the provisions and standards have been met. There is no federal law to compel acceptance of standards or provisions, since the general statement that the funds will be provided if and when the standards are accepted is effective. The ready acceptance of Federal control by the legislatures are expressed in state laws, and the absence of laws indicating a withdrawal from co-operative arrangements, are evidences that educational need is being met and that this growing central power and responsibility is receiving approval.

The system of accreditization between levels of learning, between commonwealths, and between public and private educational institutions, has provided methods to resolve conflicts. The need for understanding general problems and for effecting minor compromises has brought leaders together into organizations. Through central organizations the problems are met and minimum standards agreed upon. The Associations of Colleges and Secondary Schools have grouped the Commonwealths into zones, integrating them into large units for mutual service. In the light of pre-legislative history of other national movements in education, integration of commonwealths into wider units is an intravening step from state toward national accreditization.

In conclusion, the major trends in educational control as discovered in this study are summarized.

The trend in appointment power is toward more freedom for governors in appointment of state educational boards and of chief state officials in education. There is a definite trend toward increased appointive power of boards and executives, -- laws granting them power to appoint "as needed", heads of divisions, supervisors, experts, and specialists. The growth of the number of appointees in Federal participations in education is significant and more or less continuous. The power of appointment is in itself a centralizing factor. Increasing appointive power carries with it increased centralization and opportunity for exercising power from a central authority.

The greatest potentiality of centralization as revealed by this study of educational control is in the grants of ordinance making power. The power of school officials to determine policies and to meet changing educational need cannot be expressed in specific law. The need of granting freedom to state boards, chief officers, federal boards and executives in education has increased the number of laws granting ordinance power. The authority to make rules and regulations for the varying conditions, to prescribe courses of study, to set up minimum standards, and to have "sole and exclusive authority" in recognized administrative duties increases centralization of control. The power to interpret school law and to make judicial decisions in controversies in the field of school law, powers to approve standards set up by subordinates, to approve licenses of teachers and to remove subordinates, are all centralizing powers of control.

In the Commonwealth, the development of these ordinance and



judicial powers, as found in the laws, constitutions, and court decisions, has been definite and is steadily increasing. In the Federal government before 1880, such discretionary power was seldom placed in the laws prescribing the duties of federal educational officials. Between 1880 and 1930, every federal enactment setting up administrative machinery in education, has included an increasing number of discretionary powers.

The selected mechanisms of control in education show the following trends. Uniformity in essentials is indicated by the universal requirement of official reports and pupil attendance within the compulsory age limits in the Commonwealths: by the increasing number of required reports by the federal government and by the Supreme Court's approval of attendance laws in the Commonwealths, and limitation of state interference with certain individual educational rights. The trend in control in textbooks is toward uniformity and state ownership. Education by radio is essentially centralized. The trend toward standardization shows an extensive development in the Commonwealths. It shows an increasing recognition of educational responsibility by federal authorities in the Acts for federal aid, with an increasing freedom of administrators to set standards as educational needs arise.

Thus the major trends in educational control as revealed in this study are toward centralization. Uniformity in essential mechanisms of control is paralleled by the freedom which ordinance power grants in increasing amounts to professional educators. This power allows for the necessary freedom of local school operation under com-

petent supervision, and guarantees that centralization is not leading to lock-step routine.

The significance of this trend to educators is in educational planning. Restrictions or limitations on the one hand, and greater administrative freedom on the other, must enter into all public educational planning. More satisfactory legal bases of educational control is seen in a trend which shows increasing mutual understanding of the functional duties of the legislator and of the educator.

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Arizona	1912	Nevada	1854
Arkansas	1874	New Hampshire	1912
California	1879	New Jersey	1844
Colorado	1876	New Mexico	1911
Connecticut	1818	New York	1894
Delaware	1897	North Carolina	1876
Florida	1885	North Dakota	1899
Georgia	1877	Ohio	1912
Idaho	1890	Oklahoma	1907
Illinois	1870	Oregon	1857
Indiana	1851	Pennsylvania	1873
Iowa	1857	Rhode Island	1842
Kansas	1859	South Carolina	1895
Kentucky	1890	South Dakota	1889
Louisiana	1921	Tennessee	1870
Maine	1818	Texas	1876
Maryland	1857	Utah	1895
Massachusetts	1780	Vermont	1793
Michigan	1908	Virginia	1902
Minnesota	1857	Washington	1899
Mississippi	1890	West Virginia	1872
Missouri	1875	Wisconsin	1848
Montana	1899	Wyoming	1899

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South Dakota	Annotated Statutes, 1897. Compiled Laws, 1929. Laws of 1931.
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APPENDIX

TABLE XIII

CONSTITUTIONS ADOPTED BY AMERICAN COMMONWEALTHS 1776 TO 1932  
ARRANGED BY DATE OF ADOPTION, SHOWING NUMBER OF PARAGRAPHS  
ON SCHOOLS OR EDUCATION.

In force 1932	Date	Name of State	Education Paragraphs x indicates a paragraph
	1776	Delaware	
		Maryland	
		New Hampshire	
		New Jersey	
		North Carolina	
		Pennsylvania	x
		South Carolina	
		Virginia	
	1777	Georgia	x
		New York	
		Vermont	x
	1778	South Carolina	
x	1780	Massachusetts	xxx
	1784	New Hampshire	x
	1786	Vermont	x
	1789	Georgia	xx
	1790	Pennsylvania	xxx
		South Carolina	
	1792	Delaware	x
		New Hampshire	x
		Kentucky	
x	1793	Vermont	x
	1796	Tennessee	
	1798	Georgia	x
	1799	Kentucky	
	1802	Ohio	x
	1812	Louisiana	
	1816	Indiana	xxx
	1817	Mississippi	x
	1818	Illinois	x
x		Connecticut	xx
	1819	Alabama	x
x		Maine	x
	1820	Missouri	xx
	1821	New York	x

In force 1932	Date	Name of State	Education Paragraphs x indicates a paragraph
	1830	Virginia	
	1831	Delaware	x
	1832	Mississippi	x
	1834	Tennessee	xx
	1836	Arkansas	x
	1835	Michigan	xxx
	1838	Pennsylvania	xxx
		Florida	xx
x	1842	Rhode Island	xxxx
x	1844	New Jersey	x
	1845	Louisiana	xxxx xx
		Texas	xxxx xx
	1846	Iowa	xxxx
		New York	x
x	1848	Wisconsin	xxxx xxxx
		Illinois	x
	1849	California	xxxx
	1850	Kentucky	xx
		Virginia	x
		Michigan	xxxx xxxx x
x	1851	Indiana	xxxx xxxx
		Maryland	x
		Ohio	xx
	1852	Louisiana	xxxx xx
x	1857	Minnesota	xxxx xx
x		Oregon	xxxx x
x		Iowa	xxxx xxxx xxxx xxxx x
x	1859	Kansas	xxxx xxxx x
	1861	Alabama	x
	1863	West Virginia	xxxx
	1864	Virginia	x
		Maryland	xxxx xx
x		Nevada	xxxx xxxx xx
		Arkansas	x
		Louisiana	xxxx xxx
	1865	Alabama	x
		Florida	xx
		Georgia	x
		Missouri	xxxx xxxx x
		South Carolina	
	1866	Texas	xxxx xxxx xxx
	1867	Nebraska	xxx
		Alabama	xxxx xxxx xxxx xx
x		Maryland	xxx
	1868	Arkansas	xxxx xxx
		Florida	xxxx xxxx x
		Georgia	xxx
		Louisiana	xxxx xxxx x
		Mississippi	xxxx xxxx xx

In force 1932	Date	Name of State	Education Paragraphs x indicates a paragraph
	1868	North Carolina	xxxx xxxx xxxx xxxx x
		South Carolina	xxxx xxxx xxx
		Texas	xxxx xxxx x
x	1870	Illinois	xxxx x
		Virginia	xxxx xxxx xxxx
x		Tennessee	x
x	1872	West Virginia	xxxx xxxx x
x	1873	Pennsylvania	xxx
x	1874	Arkansas	xx
	1875	Alabama	xxxx xxxx xxx
x		Missouri	xxxx xxxx xxx
		Nebraska	xxxx xxxx xxxx
x	1876	Colorado	xxxx xxxx xxxx xxxx
x		North Carolina	xxxx xxxx xxxx xxxx
x		Texas	xxxx xxxx xxxx xxx
x	1877	Georgia	xxxx xx
	1879	Louisiana	xxxx xxxx x
x		California	xxxx xxxx x
x	1885	Florida	xxxx xxxx xxxx xxxx
x	1889	North Dakota	xxxx xxxx xxxx xxxx xxx
x		South Dakota	xxxx xxxx xxxx xxxx x
x		Montana	xxxx xxxx xxx
x		Washington	xxxx x
x		Wyoming	xxxx xxxx xxxx xx
x	1890	Idaho	xxxx xxxx xxxx
x		Kentucky	xxxx xxx
x		Mississippi	xxxx xxxx xxxx x
x	1894	New York	xxxx
x	1895	Utah	xxxx xxxx xxxx x
x		South Carolina	xxxx xxxx xxxx
x	1897	Delaware	xxxx
	1898	Louisiana	xxxx xxxx xxxx
x	1901	Alabama	xxxx xxxx xxxx xxx
	1902	New Hampshire	x
x		Virginia	xxxx xxxx xxxx
x	1907	Oklahoma	xxxx xxxx
x	1908	Michigan	xxxx xxxx xxxx xxxx x
x	1912	New Mexico	xxxx xxxx xxxx x
x		Arizona	xxxx xxxx xxxx xxxx xxxx x
x		New Hampshire	x
x		Ohio	xxxx
	1913	Louisiana	xxxx xxxx xxxx xx
x	1920	Nebraska	xxxx xxxx xxxx x
x	1921	Louisiana	xxxx xxxx xxxx xxxx xxxx xxxx